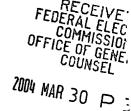
## MOMPSON, LOSS & JUDGE, EP

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March 30, 2004

OPERATIONS CENTER

### VIA HAND DELIVERY

Lawrence H. Norton, Esq. General Counsel Federal Election Commission 999 E Street, NW Washington, D.C. 20463

Re: MUR 5414

Dear Mr. Norton:

This firm serves as counsel for the Commission on Presidential Debates (the "CPD"). On behalf of the CPD, we respectfully submit this response to the complaint filed by Open Debates. As discussed in the following pages, the Open Debates complaint repeats assertions that the FEC has rejected in previous MURs, and those assertions properly should be rejected here as well.

### I. INTRODUCTION AND OVERVIEW

The sole mission of the CPD is to ensure, for the benefit of the American electorate, that general election debates are held every four years among the leading candidates for the offices of President and Vice President of the United States. The CPD is proud of its record of public service and innovation in sponsoring televised debates among the leading candidates in each of the last four presidential general elections, and the CPD looks forward to the debates it is planning for the fall of 2004.

Along with this response, we submit Declarations from the following individuals: (1) Janet H. Brown, Executive Director of the CPD (attached as Ex. 1); Alan Simpson, former Senator from Wyoming and current Member of the CPD Board of Directors (attached as Ex. 2); Newton Minow, former Chairman of the Federal Communications Commission and current Member of the CPD Board of Directors (attached as Ex. 3); Barbara Vucanovich, former Member of Congress and former Member of the CPD Board of Directors (attached as Ex. 4); John Lewis, Member of Congress and current Member of the CPD Board of Directors (attached as Ex. 5); and David Norcross, Washington, D.C. attorney and former Member of the CPD Board of Directors (attached as Ex. 6). In addition, we also attach from MUR 4987 the Declaration of Dorothy S. Ridings, current Member of the CPD Board of Directors and former President of the League of Women Voters (attached as Ex. 7).

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In the following pages and in the Declarations and materials accompanying this written response, we are pleased to review and document the history of the CPD, its efforts to maximize the educational value of the debates it sponsors and, importantly, its careful and ongoing adherence to the FEC's regulations pertaining to the sponsorship of debates. At the outset, however, it is it is important to note that the Open Debates complaint recycles charges and suppositions that are without merit and that already have been rejected by the FEC on multiple occasions.

First, Open Debates asserts that CPD is not a proper "staging organization" under 11 C.F.R. §110.13 because the CPD allegedly "endorse[s], support[s] or oppose[s] political candidates." Complaint at 2. Open Debates bases much of its claim in this regard on allegations that the CPD's origins are bipartisan rather than nonpartisan. See, e.g., Complaint at 4 ("In fact, the CPD was created by the Republican and Democratic parties as an extension of the Republican and Democratic parties.") Open Debates makes this assertion seemingly quite unaware that this same charge based on much the same "evidence" already has been considered and rejected by the FEC on more than occasion.

In fact, Complainant's allegations about purported partisanship on the part of the CPD are very similar to claims made in 2000 by Complainants John Hagelin, the Natural Law Party and Patrick Buchanan in MURs 4987 and 5004. In those complaints, complainants alleged, *inter alia*, that the CPD was not a proper staging organization under 11 C.F.R. §110.13(a) because it allegedly is bipartisan rather than nonpartisan. We enclose a copy of the First General Counsel's Report on those matters (attached hereto as Ex. 8). In that report, the General Counsel concluded "the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties." <u>Id.</u> at 15. The FEC dismissed the Complaint, based on the General Counsel's report, on July 19, 2000, and thus found no reason to believe that the CPD's activities violated the federal election laws. <u>See</u> copy of Federal Election Commission Certification for MURs 4987 and 5004 (attached hereto as Ex. 9).

Moreover, just last week, in MUR 5378, the FEC found no reason to believe a violation had occurred in yet another eligibility challenge. See General Counsel's Report (attached as Ex. 10) and FEC dismissal of Complaint (Ex. 11). In MUR 5378, the General Counsel's Report stated at 4:

[C]omplainants advance two arguments. First, complainants maintain that '[t]he CPD was founded, and is controlled by the Republican and Democratic Parties and their representatives,'...citing the alleged partisan composition of

<sup>&</sup>lt;sup>2</sup> The Federal Election Commission made similar findings in 1998, in connection with complaints filed by The Natural Law Party and Perot '96, Inc. See Statement of Reasons in connection with MURs 4451 and 4473 (Ex. 12) (finding "no reason to believe the CPD violated the law by sponsoring the 1996 presidential debates or failing to register and report as a political committee").

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CPD's board of directors and the CPD's founding by co-chairs who were, at that time, chairmen of the Republican National Committee ("RNC") and the Democratic National Committee ("DNC"), respectively. These assertions, however, were previously advanced in MURs 4987 and 5004. In those MURs, the Commission found no reason to believe that the CPD had violated the Act, and in subsequent 437g(a)(8) dismissal suits brought by the MUR 4987 and 5004 complainants, courts found for the Commission. [footnote omitted with subsequent judicial history affirming FEC]. Complainants' first argument, therefore, should be rejected.

Second, Open Debates asserts that CPD does not use "pre-established objective" candidate selection criteria as required by 11 C.F.R. §110.13 to determine which candidates may participate in its debates. Again, Open Debates either does not realize, or hopes the FEC will not realize, that this same charge has been considered and rejected by the FEC on more than one occasion. Most notably, in MURs 4987 and 5004 referred to above, complainants made the same charge with respect to CPD's candidate selection criteria for the 2000 debates (which, as discussed below, are the same as those to be used in 2004). The FEC's General Counsel, in his First Report, concluded "CPD's criteria for participation in the candidate debates appear to be pre-established, objective criteria as required by 11 C.F.R. §110.13(c), and not designed to result in the selection of certain pre-chosen participants." Id. at 15. See also MUR 5207 (accord as to 2000 Criteria) (attached as Ex. 13), and MURs 4451 and 4473 (finding CPD's 1996 Nonpartisan Candidate Selection Criteria to be "pre-established and objective") (attached hereto as Ex. 12).

Third, Open Debates asserts that the CPD has not actually employed its published candidate selection criteria to determine debate participants but, instead, has allowed the major party nominees to make those decisions. This proposition is simply frivolous in light of the wholly-transparent, "fifteen percent standard" applied by the CPD in 2000, which will also be applied in 2004. Simply stated, everyone in America who is so inclined is equally able to apply the criteria based on published poll results.

As to prior election cycles, particularly 1996, when the CPD applied a multi-faceted approach to determining whether a candidate had achieved a sufficient level of electoral support to warrant an invitation, the FEC already has rejected the very claim Open Debates advances again here. In MURs 4451 and 4473, involving complaints filed by The Natural Law Party and Perot '96, Inc., the FEC, after reviewing the same evidence relied upon here by Open Debates, rejected the claim that the CPD made its candidate selection decisions based on the instructions of the Clinton/Gore and the Dole/Kemp Committees. See Statement of Reasons, Ex. 12 at p.11 ("There certainly is no credible evidence to suggest the CPD acted upon the instructions of the [Clinton and Dole] campaigns to exclude Perot"). These same baseless charges were repeated, and rejected by the FEC, in MURs 4987 and 5004.

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#### II. BACKGROUND: THE COMMISSION ON PRESIDENTIAL DEBATES

Although we realize the FEC may now be quite familiar with the background of the CPD, we review that background briefly below.

The 1984 presidential election campaign focused national attention on the role of debates in the electoral process. Specifically, although face-to-face debates between the leading presidential candidates ultimately were held in 1984, they were hastily arranged, virtually at the last minute, after an extended period of sporadic negotiations between representatives of the nominees of the Republicans and Democrats, President Ronald Reagan, and former Vice-President Walter Mondale. The ultimate decision to hold debates during the 1976 and 1980 general election campaigns followed a similar flurry of eleventh-hour negotiations among the leading candidates. In 1964, 1968 and 1972, jockeying by the candidates resulted in no presidential debates at all during the general election campaign. Thus, the 1984 experience reinforced a mounting concern that, in any given election, voters could be deprived of the opportunity to observe a debate among the leading candidates for President.<sup>3</sup>

Following the 1984 election, therefore, two distinguished national organizations, the Georgetown University Center for Strategic and International Studies and the Harvard University Institute of Politics, conducted separate, detailed studies of the presidential election process generally, and of the role of debates in that process specifically. The reports produced by these two independent inquiries found, *inter alia*, that: (1) debates are an integral and enhancing part of the process for selecting presidential candidates; (2) American voters expect debates between the leading candidates for President; and (3) debates among those candidates should become institutionalized as a permanent part of the electoral process. Both the Georgetown and Harvard reports recommended that the two major political parties endorse a mechanism designed to ensure, to the greatest extent possible, that presidential debates between the leading candidates be made a permanent part of the electoral process. Ex. 1, Brown Declaration, ¶¶ 9-10.

In response to the Harvard and Georgetown studies, the then-chairmen of the Democratic and Republican National Committees jointly supported creation of the independent CPD. Ex. 1, Brown Declaration, ¶¶ 9-11. The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States."  $\underline{Id}$ . ¶ 3. The CPD has been granted tax-exempt status by the Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code.  $\underline{Id}$ .

<sup>&</sup>lt;sup>3</sup> <u>See generally</u> N. Minow & C. Sloan, For Great Debates 21-39 (1987); Commission on National Elections, Electing the President: A Program for Reform 41-42 (R.E. Hunter ed. 1986); Swerdlow, The Strange -- and Sometimes Surprising -- History of Presidential Debates in America, in Presidential Debates 1988 and Beyond 10-16 (J. Swerdlow ed. 1987).

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The CPD Board of Directors is jointly chaired by two distinguished civic leaders, Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr. Id. ¶ 6. While Messrs. Kirk and Fahrenkopf served as chairmen of the Democratic National Committee (DNC) and Republican National Committee (RNC), respectively, at the time the CPD was formed, they have not held those positions for many years. Id. ¶11. Indeed, Mr. Kirk's term as chairman of the DNC ended in 1989, as did Mr. Fahrenkopf's term as chairman of the RNC. Id. Since then, there have been ten chairmen of the DNC and eight chairmen of the RNC. Id. None of those eighteen individuals has had held any position with the CPD. Id. In fact, no CPD board member is an officer of either the DNC or RNC. Id. The CPD's Board members come from a variety of backgrounds, and while some are identified in one fashion or another with one or the other of the major parties (as are most civic leaders in this country), that certainly is not the case for all of the CPD Board members. Id. See also Ex. 7, Ridings Declaration, ¶ 1.

The CPD receives no funding from the government or any political party.  $\underline{Id}$ . ¶ 5. The CPD obtains the funds required to produce its debates every four years and to support its ongoing voter education activities from the communities that host the debates and, to a lesser extent, from corporate, foundation and private donors.  $\underline{Id}$ . The donors have no input into the management of any of the CPD's activities and have no input into the process by which the CPD-selects debate participants.  $\underline{Id}$ .

The CPD sponsored two presidential debates in 1988, <u>id.</u> ¶ 18; three presidential debates and one vice presidential debate in 1992, <u>id.</u> ¶ 21; two presidential debates and one vice presidential debate in 1996, <u>id.</u> ¶ 27, and three presidential and one vice presidential debates in 2000, <u>id.</u> ¶ 36.

In connection with the 2004 general election campaign, the CPD has formulated and announced plans to sponsor three presidential debates and one vice presidential debate. <u>Id.</u> ¶¶ 38-39. The CPD's debates have been viewed by tens of millions of Americans, and have served a valuable voter-education function. <u>Id.</u> ¶ 4. In addition, the CPD has undertaken a number of broad-based, nonpartisan voter education projects designed to enhance the educational value of the debates themselves, and is presently planning a number of projects designed to increase the educational value of the debates in 2004. <u>Id.</u> ¶ 43.

We review additional aspects of the CPD's history and operations below, in the course of responding to Open Debates' principal charges.

## III. THE CPD'S SPONSORSHIP OF PRESIDENTIAL DEBATES COMPLIES FULLY WITH FEC REGULATIONS

In general, corporations are prohibited from making "contributions" or "expenditures," as defined in the Federal Election Campaign Act of 1971, as amended, (the "Act"), in connection with federal elections. See 2 U.S.C. § 441b(a); see also 11 C.F.R. § 114.2(b). Pursuant to 11 C.F.R. § 100.7(b)(21), however, "[f]unds provided to defray costs incurred in staging candidate debates" in accordance with relevant regulations are exempt from the Act's definition of "contributions." Under 11 C.F.R. § 110.13(a), "nonprofit organizations described in 26 U.S.C.

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501(c)(3) or (c)(4) and which do not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with this section and 11 C.F.R. 114.4(f)." Pursuant to 11 C.F.R. § 114.4(f), a nonprofit organization of this type "may use its own funds and may accept funds donated by corporations . . . to defray costs incurred in staging debates held in accordance with 11 C.F.R. 110.13."

### A. The CPD is a Proper Staging Organization

First, Open Debates charges that CPD is not a proper "staging organization" under 11 C.F.R. § 110.13(a) because, according to Open Debates, the CPD does "endorse, support or oppose political candidates or political parties." To support this assertion, Open Debates relies heavily on isolated statements -- some dating back twenty years -- made by a variety of people, many of whom have never held any position with the CPD, to support the proposition that the CPD was formed for bipartisan rather than nonpartisan purposes. These very attacks against the CPD have been repeated routinely since the late 1980's, and they have been rejected more than once by the FEC as not bearing on whether the CPD is a proper staging organization.<sup>4</sup>

CPD certainly acknowledges its origins, as already reviewed above and in the attached Declarations, and the fact that prior to the time it began its operations in earnest, there were isolated references to the CPD as a "bipartisan effort" by those involved in the effort to ensure that presidential debates take place. In context, however, such references spoke only to the efforts of the CPD's founders to ensure that it was not controlled by any one political party, not an effort by the two major parties to control the CPD's operations or to exclude debate participation by non-major party candidates in CPD-sponsored debates. And while it most assuredly is true that the CPD's creation was enthusiastically supported by the then-chairmen of the major parties, the CPD was formed as a separate and independent corporation. Most importantly, claims based on statements of almost twenty years ago ignore the CPD's history of scrupulously establishing and applying nonpartisan criteria for the selection of participants in its debates. Ex. 1, Brown Declaration, passim.

Second, the Open Debates complaint includes a number of purported quotes from interviews conducted by the draftsman of the Open Debates complaint, George Farah, who is the Executive Director of Open Debates. To the extent these unverified quotes are attributed to individuals who have not held any position with the CPD, such as officials with various campaign

<sup>&</sup>lt;sup>4</sup> To the extent Open Debates seeks to have any civil fine, penalty or forfeiture imposed on the CPD through an action by the FEC under 2 U.S.C. § 437g for alleged violations the Federal Election Campaign Act, such claims are barred by the applicable statute of limitations for all events occurring prior to five years before the filing of the complaint. See 28 U.S.C. § 2462; FEC v. Christian Coalition, 965 F. Supp. 66, 71 (D.D.C. 1997). Numerous allegations contained in Open Debates' administrative complaint in this action refer to events that occurred or statements made more than five years ago, including some events and statements from nearly twenty years ago.

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organizations, those individuals simply were not privy to the CPD's decisionmaking processes, as is suggested by the conclusory nature of the quotes. Indeed, the FEC considered similar statements by campaign officials in MURs 4451 and 4473 and rejected them as not providing credible evidence as to the CPD's internal decisionmaking process. See Statement of Reasons at 11 (attached as Ex. 12).

In the complaint, Mr. Farah also has included quotes attributed to various individuals who serve on the CPD's Board of Directors, or who have in the past served on the CPD Board. Mr. Farah relies on these selective quotes in an effort to support his thesis that the CPD has conducted itself as a bipartisan rather than a nonpartisan organization. Attached hereto are the sworn Declarations of each of these people: Alan Simpson, former Senator from Wyoming and current Member of the CPD Board of Directors (attached as Ex. 2); Newton Minow, former Chairman of the Federal Communications Commission and current Member of the CPD Board of Directors (attached as Ex. 3); Barbara Vucanovich, former Member of Congress and former Member of the CPD Board of Directors (attached as Ex. 4); John Lewis, Member of Congress and current Member of the CPD Board of Directors (attached as Ex. 5); and David Norcross, Washington, D.C. attorney and former Member of the CPD Board of Directors (attached as Ex. 6). In their sworn Declarations, these individuals state that to the extent that they even recall being interviewed by Mr. Farah, they are certain he did not disclose that his purpose was to press a claim against the CPD and, most importantly, that Mr. Farah's selective attribution of various statements to them misrepresents their views. To a person, these individuals testify that the CPD's approach to issues involving the adoption and application of candidate selection criteria has been at all times fair, reasonable, nonpartisan and based wholly on a good faith application of the CPD's published candidate selection criterion.

Third, the Open Debates complaint claims -- as if it were newly-discovered -- another well known fact: that the major party nominees negotiate directly with one another concerning various aspects of the debates. Open Debates cites this as evidence that the CPD is not a proper "staging organization." In this effort, Open Debates erroneously alleges that "The CPD approach -- accepting unilaterally imposed and secret instructions from the major party campaigns -drastically differs from the practices of previous sponsors." Complaint at 8. Thus, claims Open Debates, the CPD "implements the shared demands of the major party candidates," and in so doing demonstrates clear "support" for those candidates and "opposition" to nonmajor party candidates. Id.

A few points are important to refuting this claim.

As an initial matter, it historically has been the case that the candidate participants in high-stakes debates have negotiated directly regarding various aspects of those debates. It was true for the Lincoln-Douglas debates, it was true for the Kennedy-Nixon debates, and it was true for presidential debates sponsored by the League of Women Voters.<sup>5</sup> The fact that such negotiations have continued in the years in which the CPD has sponsored debates is not, in and of itself,

<sup>&</sup>lt;sup>5</sup> <u>See</u> S.Kraus, <u>Televised Presidential Debates and Public Policy</u> (1988) at 29-72 (attached as Ex. 14). <u>See also</u> Ex. 1, Brown Decl. at ¶41.

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particularly significant or, given the importance of the debates to the candidates participating, particularly surprising.

Moreover, a careful review of the 1992 and 1996 Memoranda of Understanding attached to the Open Debates Complaint reveals that – the issue of nonmajor party candidate participation aside for the moment – there is nothing in those agreements that bears on the suitability of the CPD as a "staging organization." The agreements, as one would expect, go to great lengths to ensure that no one debate participant is favored over another. What is most striking, though, and Open Debates, of course, mentions it not at all, is the near complete agreement by the major party nominees, as reflected in the Memoranda of Understanding, to debate on the terms previously publicly announced by the CPD long before the major party nominees were even known. See Ex. 1, Brown Decl. at ¶41.

Finally, Open Debates asserts that the 1992 and 1996 Memoranda of Understanding attached to the Open Debates Complaint support their assertion that the major party nominees and not the CPD have in the past determined candidate selection issues. Although Open Debates may wish it were otherwise, this charge does not become true through mere repetition. What the major party nominees choose to put in agreements to which the CPD is not a party in no way binds the CPD and it does not constitute evidence of the CPD's actual decisionmaking process. In Section III.C. of this response, below, we will review the CPD's actual decisionmaking process with respect to candidate selection in prior election cycles.

#### B. The CPD's Published Selection Criteria Comply Fully with FEC Regulations

Open Debates asserts that the CPD's published candidate selection criteria in connection with previous election cycles have not complied with the FEC's regulations. Those regulations, found at 11 C.F.R. § 110.13 (c), as amended in 1995, provide in pertinent part as follows:

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

Once again, Open Debates presents its challenge as if it has not already been carefully considered, and flatly rejected, by the FEC, but it has been -- more than once. In light of the fact that these issues have been fully presented to and resolved by the FEC on multiple occasions, we simply note as follows.

First, the CPD has gone to great lengths in the adoption and application of its candidate selection criteria to ensure that it has been in full compliance with FEC regulations. We provide a detailed discussion of the criteria, their evolution over time and the rationale behind the criteria in the attached Declarations of Janet Brown (Ex. 1) and CPD Board Member Dorothy Ridings

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(Ex. 7). This same information has been presented previously by the CPD to the FEC and has been discussed in prior FEC Statements of Reasons and General Counsel reports.

Second, in MURs 4451 and 4473, the FEC considered and discussed at length the multifaceted selection criteria employed by the CPD in 1996 (and also in 1988 and 1992). The FEC concluded that: "The CPD debate criteria contain exactly the sort of structure and objectivity the Commission had in mind when it approved the debate regulations in 1995." See Statement of Reasons at 7, attached as Ex. 12.

Third, in MURs 4987 and 5004, the FEC unanimously rejected an attack on CPD's candidate selection criteria for 2000. A copy of the First General Counsel's Report on those matters is attached as Ex. 8. In that report, which includes a detailed review and discussion of the issues presented, the General Counsel concluded (1) "the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties," and (2) "CPD's criteria for participation in the candidate debates appear to be preestablished, objective criteria as required by 11 C.F.R. §110.13(c), and not designed to result in the selection of certain pre-chosen participants." Id. at 15. The Report explained:

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it has proposed for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate selection criteria were: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. With respect to signs of national newsworthiness and competitiveness, the CPD listed factors, such as the professional opinions of Washington bureau chiefs of major newspapers, news magazines and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional eligibility, ballot access, and a level of electoral support of 15% of the national electorate based upon the average of polls conducted by five major polling organizations, appear to be relatively easier to determine which candidates will qualify, and appear to be even more objective than the 1996 candidate selection criteria. Given this, and the fact that the Commission did not find a problem with the 1996 criteria, it appears that the CPD's candidate selection criteria for participation in the 2000 general election debates are in accordance with the requirements of 11 C.F.R. § 110.13.

The FEC's decision in MURs 4987 and 5004 finding no reason to believe a violation had occurred was affirmed by both the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. See Buchanan v.

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Federal Election Comm'n, 112 F. Supp. 2d 58, 2000 U.S. Dist. LEXIS 13448 (D.D.C. Sept. 14, 2000), aff'd, No. 00-5337 (D.C. Cir. Sept. 29, 2000), Natural Law Party of the United States of America v. Federal Election Comm'n, Civ. Action No. 00CV02138 (D.D.C. Sept. 21, 2000), aff'd, No. 00-5338 (D.C. Cir. Sept. 29, 2000).

The CPD has announced the adoption of its nonpartisan candidate selection criteria for 2004. Ex. 1, Brown Decl. at ¶ 38. Those criteria are the same as those employed in 2000, which the FEC already has found comply with the FEC's applicable regulations. <u>Id.</u> In short, the Open Debates complaint presents no new issue to be decided with respect to whether the CPD's candidate selection criteria comply with FEC regulations.

### C. CPD Applies and Relies Upon its Published Candidate Selection Criteria

Open Debates concludes its complaint by contending (again): "The major party candidates – not the Advisory Committee or 15 percent threshold – determined who would or would not participate in CPD-sponsored general election debates." Complaint at 12. These allegations, are not new, are wholly without merit and already have been rejected by the FEC.

First, the allegation that participation in the 2000 debates was determined by the major party nominees rather than the wholly-transparent fifteen percent threshold set forth in the CPD's published criteria is nonsensical. There can be no dispute that no candidate other than those actually invited to debate in 2000 satisfied the criteria.

Second, with respect to the 1992 and 1996 debates, Open Debates strings together snippets of information and statements by persons not directly involved in the CPD's decisionmaking process to support its claim that the major party nominees, not the CPD, determined whether Ross Perot qualified for inclusion in those debates under the CPD's publicly announced candidate selection criteria. This supposition by Open Debates is wholly dependent on its erroneous and cynical assumption that if the major party nominees addressed the issue of participation in their memoranda of understanding, the CPD Advisory Committee and Board of Directors necessarily then abdicated their duty independently to apply the CPD's published selection criteria.

Open Debates' allegations are as wrong as they are unfair to the distinguished men and women who serve and have served, on a volunteer basis, as members of the CPD's Advisory Committee and Board. CPD submits with this response the Declaration of its Executive Director, Janet H. Brown, which sets forth in detail, *under oath and based on direct knowledge*, the CPD's actual decisionmaking process with respect to both the 1992 and 1996 debates. See Ex. 1. Those decisions were made based on a good faith application of the CPD's published nonpartisan candidate selection criteria. See also Declarations of CPD Directors N. Minow (1992 and 1996 debates) (Ex. 3), B. Vucanavich (1992 and 1996 debates) (Ex. 4), J. Lewis (1996 debates) (Ex. 5), and D. Norcross (1992 debates) (Ex. 6).

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Moreover, the FEC rejected these same allegations when advanced in the 1996 MUR Complaints.

Absent specific evidence of a controlling role in excluding Mr. Perot, the fact the Committees may have discussed the effect of Mr. Perot's participation on their campaigns is without legal consequence. There certainly is no credible evidence to suggest the CPD acted upon the instructions of the two campaigns to exclude Mr. Perot. To the contrary, it appears one of the campaigns wanted to *include* Mr. Perot in the debate. . . . In fact, CPD's ultimate decision to exclude Mr. Perot (and others) only corroborates the absence to any plot to equally benefit the Republican and Democratic nominees to the exclusion of all others.

#### Statement of Reasons at 11.

Third, with respect to 2000, although Open Debates vigorously accuses the CPD of not having applied its published "fifteen percent" criterion when making candidate participation determinations, it does not actually contend, as it cannot, either that any candidate who satisfied the criteria was not invited or that the candidates who were invited did not satisfy the criteria. Rather, and tellingly, Open Debates in its complaint cites solely an "anonymous interview with George Farah," Open Debates' Executive Director, for the proposition that the major party nominees dictated candidate selection decisions to the CPD. The Complaint cites the "anonymous interview" for the following accusatory statement:

The 2000 'Memorandum of Understanding' stipulated that the participants in the presidential debates would be Al Gore and George W. Bush, and the CPD sponsored three general election debates that included only Al Gore and George W. Bush.

Here, the fallacious nature of Open Debates' allegations is laid bare. As an initial matter, the CPD's streamlined criteria adopted for 2000 (and 2004) are wholly transparent in application precisely to avoid uncertainty about the application process and baseless allegations about that process. Under the 2000 criteria, there really is not room for a good faith attack on the application of the criteria.

In fact, the information cited to "anonymous" by Open Debates is demonstrably wrong. Attached to the Declaration of Janet H. Brown, is a true and complete copy of the September 28, 2000, fully executed Memorandum of Understanding between the campaigns of Al Gore and George W. Bush. Brown Decl. at ¶42. Section 2, Sponsorship, of this Agreement states the exact opposite of what Open Debates contends. The Agreement states that the CPD's published selection criteria shall govern candidate selection:

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The two campaigns will participate in four debates sponsored by the Commission on Presidential ("Commission") or if the Commission declines, another entity. The parties agree that the Commission's Nonpartisan Selection Criteria for 2000 General Election Debate Participation shall apply to determining the candidates to be invited to participate in these debates. (Emphasis supplied)

Open Debates could hardly have it more wrong.

For the foregoing reasons, the Complaint filed by Open Debates fails to set forth reason to believe a violation of the Act has occurred and should be dismissed on that ground.

Respectfully submitted,

THOMPSON, LOSS & JUDGE, L.L.P.

Lewis K. Loss

Jennifer L. Gates

Attachments

### **BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

# EXHIBITS TO RESPONSE OF THE COMMISSION ON PRESIDENTIAL DEBATES

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### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

### DECLARATION OF JANET H. BROWN

I, Janet H. Brown, Executive Director of the Commission on Presidential Debates ("CPD"), give this declaration based on personal knowledge.

#### Background

- 1. I have been the Executive Director of the CPD since March 1987. Under the supervision of the Board of Directors, I am primarily responsible for planning and organizing the debates the CPD intends to sponsor in 2004, as I have been in 1988, 1992, 1996 and 2000.
- 2. Prior to serving as Executive Director of the CPD, I served on the staffs of the late Ambassador Elliot Richardson and former U.S. Senator John Danforth.
  Additionally, I have held appointments at the White House Domestic Council and the
  Office of Management and Budget. I am a graduate of Williams College and have a
  master's degree in public administration from Harvard University.
- 3. The CPD is a private, nonpartisan, not-for-profit corporation dedicated solely to the sponsorship of general election presidential and vice presidential debates and related voter education functions. The CPD was organized in February 1987, under the laws of the District of Columbia, and has its sole office in the District of Columbia. CPD's Articles of Incorporation identify its purpose as "to organize, manage, produce, publicize and support debates for the candidates for President of United States . . . " The CPD has been granted

tax-exempt status by the Internal Revenue Service under §501(c)(3) of the Internal Revenue Code. Consistent with its §501(c)(3) status, the CPD makes no assessment of the merits of any candidate's or party's views, and does not advocate or oppose the election of any candidate or party.

- 4. The CPD has sponsored presidential and vice presidential debates in 1988, 1992, 1996 and 2000. The CPD's debates have been viewed by tens of millions of Americans and have served a valuable voter education function. Prior to CPD's sponsorship in 1988, televised presidential debates were produced in only four general election years: by the networks in 1960, and by the non-profit League of Women Voters in 1976, 1980, and 1984. No televised presidential debates were held in the general elections in 1964, 1968 or 1972.
- 5. The CPD receives no government funding; nor does it receive funds from any political party. The CPD obtains the funds to produce its debates from the universities and communities that host the debates, and it relies on corporate, foundation and private donations to augment contributions from the debate hosts and to support the CPD's ongoing voter education activities. None of CPD's donors has sought or had any input whatsoever in the promulgation of CPD's candidate selection criteria, in the selection of debate participants, or in any other substantive aspect of the debates.
- 6. The CPD has an eleven-member, all volunteer Board of Directors ("CPD Board"). The Co-Chairmen of the CPD Board, Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., each are distinguished civic leaders with extensive records of public service. Mr. Fahrenkopf has served as Co-Chairman of the Rivlin Commission, which investigated and reported on the government of the District of Columbia, was a founder of the National Endowment for Democracy, was a member of the ABA-sponsored judicial education center for federal and

state judges, and was the Chairman of the American Bar Association's Coalition for Justice, a group coordinating the ABA's initiative to improve the American system of justice. Mr. Fahrenkopf also serves on the Board of Trustees of the E. L. Wiegand Foundation and is a member of the Greater Washington Board of Trade, the Economic Club of Washington and the Federal City Council. Mr. Kirk has served as the Co-Chairman of the National Student/Parent Mock Election and on numerous civic and corporate boards. Mr. Kirk currently is the Chairman of the Board of Directors of the John F. Kennedy Library Foundation and is Of Counsel to the law firm of Sullivan & Worcester, LLP of Boston, Massachusetts.

7. The remaining current members of the CPD Board are:

Howard G. Buffett, Chairman of the Howard G. Buffet Foundation.

John C. Danforth, Lawyer and Partner, Bryan Cave LLP; Retired U.S. Senator from Missouri.

The Honorable Jennifer Dunn, Member of the U.S. House of Representatives from Washington.

Antonia Hernandez, CEO, California Community Foundation.

Caroline Kennedy, Author.

Newton Minow, Lawyer, Sidley Austin, Brown & Wood, LLP; former Chairman of the Federal Communications Commission.

Dorothy Ridings, President and CEO of the Council on Foundations; former President, League of Women Voters.

H. Patrick Swygert, President, Howard University

Alan Simpson, Retired Senator from Wyoming.

8. Former Presidents Gerald Ford, Jimmy Carter, Ronald Reagan and Bill Clinton serve as Honorary Co-Chairmen of CPD.

### History of the Commission on Presidential Debates

- 9. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies, and (2) the Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission.
- assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.
- 11. Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., then-chairmen of the Republican National Committee ("RNC") and Democratic National Committee ("DNC") respectively, responded by initiating CPD as a not-for-profit corporation separate and apart from their party organizations. While Messrs. Kirk and Fahrenkopf served as the chairs of the major national party committees at the time CPD was formed, they no longer do so. Indeed, since Mr. Fahrenkopf stepped down as RNC chair, in 1989, there have been eight subsequent RNC chairmen; none has held any position with the CPD. Similarly, since Mr. Kirk stepped down as chairman of the DNC, there have been ten subsequent chairman;

none has held any position with the CPD. No CPD Board member is an officer of the Democratic or Republican National Committee. Although some CPD Board members, like the majority of this country's civic leaders, identify with the Republican or Democratic Party, that certainly is not the case with every Board member. For example, I am not aware of what party, if any, Board members Dorothy Ridings or Howard Buffett would identify with if asked.

### 1988: The CPD Successfully Launches Its First Debates

- 12. On July 7, 1987, over one year prior to the sponsorship of the CPD's first debates, CPD formed an advisory panel of distinguished Americans, including individuals not affiliated with any party, in order to provide guidance to CPD with respect to several areas, including non-major party candidate participation in CPD-sponsored debates. From virtually the beginning of CPD's operations, CPD's Board recognized that, although the leading contenders for the offices of President and Vice President of the United States historically have come from the major parties, CPD's educational mission would be furthered by developing criteria by which to identify any non-major party candidate who, in a particular election year, was a leading candidate for the office of President or Vice President of the United States, and to whom an invitation should be extended to participate in one or more CPD-sponsored debate.
- 13. The individuals serving on that advisory panel (and their then-current principal affiliation) included:

Charles Benton, Chairman, Public Media Inc.;

Ambassador Holland Coors, 1987 Year of the Americas;

Marian Wright Edelman, President, Children's Defense Fund;

Mary Hatwood Futrell, President, National Education Association;

Carla A. Hills, Partner, Weil, Gotshall & Manges;

Barbara Jordan, Professor, LBJ School of Public Affairs, University of Texas;

Melvin Laird, Senior Counselor, Readers' Digest;

Ambassador Carol Laise;

William Leonard, former President, CBS News;

Kate Rand Lloyd, Managing Editor, Working Woman Magazine;

Newton Minow, Partner, Sidley & Austin;

Richard Neustadt, Professor, Kennedy School of Government, Harvard University;

Ed Ney, Vice Chairman, Paine Webber Inc.;

Paul H. O'Neill, Chairman and Chief Executive Officer, Aluminum Company of America;

Nelson W. Polsby, Professor, University of California at Berkeley;

Jody Powell, Chairman and Chief Executive Officer, Ogilvy & Mather Public Affairs;

Murray Rossant, Director, Twentieth Century Fund;

Jill Ruckelshaus, director of various non-profit entities;

Lawrence Spivak, former Producer and Moderator, "Meet the Press";

Robert Strauss, Partner, Akin, Gump, Strauss, Hauer & Feld;

Richard Thornburgh, Director, Institute of Politics, Harvard University;

Marietta Tree, Chairman, Citizen's Committee for New York City;

Anne Wexler, Chairman, Wexler, Reynolds, Harrison & Schule; and

Mrs. Jim Wright.

14. The advisory panel convened in Washington on October 1, 1987 to discuss the issues of its mandate, including the candidate selection criteria, after which the CPD Board appointed a subcommittee of the advisory panel, headed by the now-late Professor Richard Neustadt of the Kennedy School of Government, Harvard University, to draw on the deliberations and develop nonpartisan criteria for the identification of appropriate third-party candidates to participate in CPD sponsored debates.

- 15. On November 20, 1987, Professor Neustadt's subcommittee recommended to the CPD Board the adoption of specific nonpartisan candidate selection criteria intended to identify those candidates other than the nominees of the major parties with a realistic chance of becoming President or Vice President of the United States. The Neustadt subcommittee reported that the adoption and application of such criteria would help ensure that the primary educational purpose of the CPD -- to ensure that future Presidents and Vice Presidents of the United States are elected after the voters have had an opportunity to hear them debate their principal rivals -- would be fulfilled.
- 16. While the 1987 candidate selection criteria themselves were quite detailed, they included a review of three types of factors: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness, and (3) indicators of national public enthusiasm or concern, to determine whether a candidate had a realistic chance of election.
- 17. On February 4, 1988, the CPD Board unanimously adopted the selection criteria proposed by Professor Neustadt's subcommittee. The sole objective of the criteria adopted by the CPD in 1988 was to structure the CPD debates so as to further the nonpartisan educational purpose of those debates, while at the same time complying fully with applicable law. An Advisory Committee to the CPD Board, chaired by Professor Neustadt, was created for the purpose of applying the 1988 candidate selection criteria to the facts and circumstances of the 1988 campaign.
- 18. Professor Neustadt's Advisory Committee met in advance of the debates and carefully applied the candidate selection criteria to the facts and circumstances of the 1988 campaign. The Advisory Committee unanimously concluded that no non-major party candidate satisfied the criteria and, accordingly, the Advisory Committee recommended to

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the CPD Board that no non-major party candidate be extended an invitation to participate in the CPD's 1988 debates. The CPD Board of Directors, after carefully considering the Advisory Committee's recommendation, the criteria and the facts and circumstances of the 1988 campaign, voted unanimously to accept the Advisory Committee's recommendation. Thereafter, the CPD successfully produced three presidential debates between Vice President Bush and Governor Dukakis and one vice presidential debate between Senator Bentsen and Senator Quayle.

### 1992: The CPD's Debates Include Three Candidates

- 19. On or about January 16, 1992, the CPD Board requested that the Advisory Committee, again chaired by Professor Neustadt, assist the CPD in promulgating nonpartisan candidate selection criteria in connection with the 1992 election. Pursuant to the Advisory Committee's recommendation, the CPD Board adopted substantially the same selection criteria used in 1988, with minor technical changes.
- 20. The 1992 Advisory Committee, consisting of Professor Neustadt; Professor Diana Carlin of the University of Kansas; Dorothy Ridings, Publisher and President of the Bradenton Herald and former President of the League of Women Voters; Kenneth Thompson, Director of the Miller Center, University of Virginia; and Eddie Williams, President, Joint Center for Political and Economic Studies, met on September 9, 1992 to apply the candidate selection criteria to the 100-plus declared presidential candidates seeking election in 1992. At that time, it was the unanimous conclusion of the 1992 Advisory Committee that no non-major party candidate then seeking election had a realistic chance in 1992 of becoming the next President of the United States. Ross Perot, who had withdrawn from the race in July 1992, was not a candidate for President at the time of this determination.

the CPD Board to update its application of the 1992 criteria to include subsequent developments, including Ross Perot's October 1, 1992 reentry into the campaign. The Advisory Committee concluded that Mr. Perot satisfied the selection criteria, and based on that recommendation, the CPD Board extended invitations to Mr. Perot and his running mate, Admiral James B. Stockdale, to participate in its first two 1992 debates. When it became clear that the debate schedule — four debates in eight days — would prevent any meaningful reapplication of the selection criteria, the CPD extended its original recommendation that the Perot/Stockdale campaign participate in two debates to all four debates. See October 6 and 7, 1992 letters (attached at Tab A). Thereafter, the CPD produced three presidential debates involving President Bush, Governor Clinton, and Mr. Perot, and one vice presidential debate between Vice President Quayle, Senator Gore, and Admiral Stockdale.

22. When the Advisory Committee applied the 1992 criteria to Mr. Perot, it faced the unprecedented situation in which a candidate, whose standing in the polls had been approximately 40%, had withdrawn from the race, but then rejoined the campaign shortly before the debates, with unlimited funds to spend on television campaigning. The Advisory Committee found that it was unable to predict the consequences of that combination, but agreed that Mr. Perot had a chance of election if he did well enough that no candidate received a majority of electoral votes and the election was determined by the United States House of Representatives. Although the Advisory Committee viewed Mr. Perot's prospect of election as unlikely, it concluded that the possibility was not unrealistic, and that Mr. Perot therefore met the CPD's 1992 criteria for debate participation. See September 17, 1996 letter (attached at Tab B).

23. National polls available at the time the CPD made its decision with respect to Ross Perot's participation in 1992 varied significantly, perhaps due to the unprecedented events surrounding Mr. Perot's withdrawal and reentry into the presidential race very shortly before the debates commenced. Polling data made available to the Advisory Committee at the time it made its recommendation to invite Mr. Perot reported national support for Mr. Perot ranging from 9 percent to 20 percent.

### 1996: The CPD's Criteria are Upheld as Objective and Nonpartisan

- 24. After evaluation of the prior debates and careful consideration of how best to achieve its educational mission, on September 19, 1995, the CPD Board adopted the same selection criteria, with minor changes, for use in the 1996 debates, and appointed a 1996 Advisory Committee consisting of the same members as the 1992 committee.
- 25. On September 16, 1996, the Advisory Committee met to apply the candidate selection criteria to the more than 130 declared non-major party presidential candidates seeking election in 1996. Although the 1996 candidate selection criteria did not expressly require it to do so, the 1996 Advisory Committee independently applied the criteria to the Democratic and Republican party nominees. In light of its findings, the Advisory Committee recommended to the CPD's Board that only President Clinton and Senator Dole be invited to participate in the CPD's 1996 presidential debate, and that only Vice President Gore and Congressman Kemp be invited to participate in the CPD's 1996 vice presidential debate. The CPD Board unanimously accepted the 1996 Advisory Committee's recommendation.
- 26. In a letter from Professor Neustadt, the Advisory Committee explained that after careful consideration of the circumstances in the 1996 campaign, it found that neither Mr. Perot nor any other non-major party candidate had a realistic chance of being elected

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president that year. With respect to Mr. Perot, the Advisory Committee emphasized that the circumstances of the 1996 campaign differed from the unprecedented circumstances of 1992 – which included the fact that at a point before his withdrawal from the race in 1992, Mr. Perot had registered support at a level of 40% in the polls and that, in 1996 unlike 1992, Mr. Perot's funding was limited by his acceptance of a federal subsidy. See September 17, 1996 letter, Tab B.

27. In October 1996, the CPD sponsored two presidential debates between President Clinton and Senator Dole and one vice-presidential debate between their running mates.

### 2000: The CPD Adopts More Streamlined Criteria

28. After each election cycle, the CPD has examined a wide range of issues relating to the debates. These reviews have considered format, timing and other issues, including the candidate selection process. The review the CPD conducts after each election is part of the CPD's ongoing effort to enhance the contribution the debates make to the process by which Americans select their next President. After very careful study and deliberation, the CPD adopted more streamlined criteria in January 2000 for use in the 2000 general election debates. In summary, the CPD Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation (the "2000 Criteria") were as follows:

(1) constitutional eligibility; (2) appearance on a sufficient number of state ballots to achieve an Electoral College majority; and (3) a level of support of at least fifteen percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination. See 2000 Criteria (attached at Tab C).

- 29. The CPD adopted its candidate selection for 2000 in the belief that the streamlined criteria would enhance the debates and the process by which Americans select the President. The approach adopted in 2000 is faithful to the long-stated goal of the CPD's debates to allow the electorate to cast their ballots after having had an opportunity to sharpen their views of the leading candidates. The approach also has the virtue of clarity and predictability, which the CPD believed would further enhance the public's confidence in the debate process.
- 30. The CPD's 2000 Criteria were not adopted with any partisan (or bipartisan) purpose. They were not adopted with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a preordained result. Rather, the 2000 Criteria were adopted to further the legitimate voter education purposes for which the CPD sponsors debates.
- 31. The CPD's selection of fifteen percent as the requisite level of support was preceded by careful study and reflects a number of considerations. It was the CPD's considered judgment that the fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.
- 32. Prior to adopting the 2000 Criteria, the CPD conducted its own analysis of the results of presidential elections over the modern era and concluded that a level of fifteen percent support of the national electorate is achievable by a significant third party or independent candidate. Furthermore, fifteen percent was the figure used in the League of Women Voters' 1980 selection criteria, which resulted in the inclusion of independent

candidate John Anderson in one of the League's debates. In making this determination, the CPD considered, in particular, the popular support achieved by George Wallace in 1968 (Mr. Wallace had achieved a level of support as high as 20% in pre-election polls from September 1968); by John Anderson in 1980 (Mr. Anderson's support in various polls reached fifteen percent when the League of Women Voters invited him to participate in one of its debates); and by Ross Perot in 1992 (Mr. Perot's standing in 1992 polls at one time was close to 40% and exceeded that of the major party candidates, and he ultimately received 18.7% of the popular vote).

33. The CPD considered, but rejected, alternate standards, including the possibility of using eligibility for public funding of general election campaigns, rather than polling data, as a criterion for debate participation. That criterion is itself both potentially overinclusive and underinclusive. Eligibility for general election funding is determined based on performance in the prior presidential general election. The CPD realized that such an approach would be underinclusive to the extent that it would automatically preclude participation by a prominent newcomer (such as Ross Perot in 1992), but also would be overinclusive to the extent it would mandate an invitation to the nominee of a party that performed well in a prior election, but who did not enjoy significant national public support in the current election. In addition, while the United States Congress determined that five percent was a sufficient level of support for purposes of determining eligibility for federal funding as a "minor" party (at a level that is substantially lower than that received by the "major" parties), as noted, a debate host hoping to present the public with a debate among the leading candidates (none of whom are required to debate) must necessarily take into account a different set of considerations.

- 34. In 2000, the CPD retained Dr. Frank Newport, the Editor-in-Chief of the Gallup Poll, as a consultant to advise the CPD in connection with the implementation of the 2000 Criteria. Dr. Newport is a well-respected expert in the areas of polling methodology and statistics.
- 35. The CPD adopted the 2000 Criteria for the sole purpose of furthering its educational mission. On their face, the criteria are pre-established and objective within the meaning of the FEC's debate regulations. The CPD, as a non-profit, nonpartisan debate sponsor, is entitled to select its own objective criteria and nothing about its decision to use the 2000 Criteria, including its fifteen percent standard, is contrary to the guidelines the FEC has provided to debate sponsors.
- 36. In 2000, the CPD sponsored presidential debates held in Boston on October 3, 2000, in Winston-Salem, North Carolina on October 11, and in St. Louis on October 17, and a single vice presidential debate in Danville, Kentucky on October 5, 2000. Eligibility to participate in the debates was determined by the CPD Board, with the assistance of Dr. Frank Newport of Gallup, based solely on the application of the CPD's published Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation. Those determinations were made at CPD Board meetings conducted on September 26, October 8 and October 14, 2000.
- 37. The CPD's debates in 2000 were viewed by millions and lauded as "illuminating," of "enormous help" to voters, and "lively and informative." A few examples of contemporaneous favorable editorials on the debates are attached at Tab D.

#### 2004: The CPD Plans for General Election Debates

38. The CPD is well along in its planning for the debates it plans to host in connection with the 2004 general election campaign. As it has done in connection with

previous election cycles, after the 2000 debates, the CPD Board examined its approach to candidate selection. After careful study and deliberation, the CPD determined that the criteria it had employed in connection with the 2000 debates had served well the voter education purposes for which the CPD sponsors debates. Accordingly, on September 24, 2003, the CPD announced its Nonpartisan Candidate Selection Criterion for 2004 General Election Debate Participation. Those criteria are the same as those used in 2000 and are attached hereto at Tab E. Once again, Dr. Frank Newport, Editor-in-Chief of the Gallup Poll, will serve as a consultant to the CPD in connection with the application of the criteria.

- 39. On November 6, 2003, the CPD announced the following schedule and sites for the 2004 debates: first presidential debate on September 30, 2004 at the University of Miami in Coral Gables, Florida; vice presidential debate on October 5, 2004 at Case Western Reserve University in Cleveland, Ohio; second presidential debate on October 8, 2004 at Washington University in St. Louis, Missouri; and third presidential debate on October 13, 2004 at Arizona State University in Tempe, Arizona. The CPD anticipates making further announcements concerning its planned debates over the coming months.
- 40. I am aware that the complainants in MUR 5414 cite statements attributed to a variety of individuals associated with various campaigns over the years intended to support the assertion that the major party nominees in prior election cycles have had substantial input into, or even controlled, the CPD's candidate selection decisions. This is completely untrue. The CPD's candidate selection decisions have been made in 1988, 1992, 1996 and 2000 based on a good faith application of the CPD's published candidate selection criteria, as described earlier in this Declaration. In 1988, 1992 and 1996, the CPD's decisions regarding which candidates to invite to its debates were made by the CPD's Board. In each instance, the CPD Board unanimously adopted the recommendations of the independent

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Advisory Committees charged with the task of applying the CPD's pre-established, objective criteria. At no time did any campaign or the representative of any campaign have a role in the Advisory Committee's or the CPD Board's decision-making process. In 2000, the decisions were made by the CPD Board based on a straightforward application of the wholly-transparent criteria adopted for 2000.

- 41. I also am aware that the complainant in MUR 5414 has made certain allegations based on the fact that the major party nominees have negotiated memoranda of understanding or agreement in connection with the debates sponsored by the CPD. Complainant errs in stating or suggesting that this is a practice that began in 1988 with the CPD's sponsorship. Based on my study of previous presidential debates, such agreements are the norm. In any event, the agreements cited by the Complainant have largely adopted the CPD's previously-stated plans with respect to the number, place, dates and format for the debates. 'The agreements also address a variety of production details that have no bearing on the educational value or mission of the debates. Even as to those details, the CPD's production team has exercised its independent judgment when actually producing the debates to ensure a high quality broadcast. Any understandings or agreements between the major party nominees have not been the basis for decisions by the CPD concerning candidate eligibility to participate in the CPD's debates; those decisions, as stated previously, have been based on a good faith application of the CPD's published nonpartisan candidate selection criteria.
- 42. Attached hereto at Tab F is what I understand to be a true and complete copy of the executed Memorandum of Understanding in 2000 between the Gore and Bush campaigns.

  That document expressly states that the question of candidate participation was to be determined on the basis of the CPD's published Nonpartisan Candidate Selection Criteria for

2000. Attached at Tab G are CPD press releases documenting CPD's various announcements made during the twenty-four months leading up to the 2000 debates concerning its planning and proposals for the debates. As those press releases demonstrate, the dates, number, formats and locations for the 2000 debates ultimately agreed on by the major party nominees in their bilateral agreement attached at Tab F are as the CPD had earlier proposed.

43. In addition to sponsorship of the 1988, 1992, 1996 and 2000 debates and its planned sponsorship of the 2004 debates, the CPD has engaged in a number of other related voter education activities, each intended in a nonpartisan manner to enhance the educational value of the debates themselves. In 1988, the CPD, in conjunction with the Library of Congress and the Smithsonian Institution, prepared and distributed illustrated brochures on the history and role of political debates. In 1990, the CPD sponsored a symposium on debate format attended by academic experts, journalists, political scientists and public policy observers. Also in 1990, the CPD in Partnership with the National Association of Broadcasters produced a videotape and brochure giving guidance to schools, media organizations and civic groups on how to sponsor debates. In 1992, the CPD produced a viewers' guide to debates in cooperation with the Speech Communication Association. In connection with the 1996 Debates, the CPD sponsored DebateWatch '96, in which over 130 organizations (including numerous cities and town, high schools, presidential libraries, civic associations, universities and chambers of commerce) participated by hosting forums in which citizens viewed the debates together and had the opportunity to discuss the debates afterwards with other viewers and listeners. In 2000, the CPD's voter education projects reached millions of Americans, primarily through an aggressive Internet effort. More than 6 million people visited the CPD's website, www.debates.org for: online surveys (completed by 44,500 citizens); issue forums on

election topics; an online debate history; educational resources for teachers and civic leaders; and services for non-English speakers including education materials in Spanish and debate transcripts in six foreign languages. In addition to online outreach, the CPD also conducted the DebateWatch program, through which citizens gathered in communities nationwide to watch the debates, discuss them, and share feedback with the CPD. The CPD partnered with over 200 organizations, schools, and technology companies in order to complete these tasks. In 2000, the CPD also produced a two-hour PBS special, Debating our Destiny," in conjunction with McNeil/Lehrer Productions. For 2004, the CPD plans to expand the scope of DebateWatch through online outreach and collaborations with civic groups nationwide. By partnering with voter education organizations including the Smithsonian Institution, AARP, Congressional Black Caucus Institute, Lifetime

Television, and KidsVoting USA, the CPD is reaching out to citizens both here and those posted overseas to maximize the educational value of the debates. In addition, the CPD hopes to conduct a series of youth debates using the sets from past presidential debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29 day of March, 2004.

JANET HABROWN

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#### October 6, 1992

#### YIA PACSIKILE

Mr. Robert M. Teeter Campaign Chairman Bush/Quayle '92 1030 15th Street, N.W. Washington, D.C. 20005

Mr. Mickey Kantor National Campaign Chair Clinton/Gore '92 National Campaign Headquarters Post Office Box 615 Little Rock, Arkansas 72203

#### Gentlemen:

The Board of Directors of the Commission on Presidential Debates voted today to accept your invitation to sponsor debates between the leading candidates for President and Vice President of the United States on October 11, 13, 15, and 19, 1992. The Commission's decision is based on its conclusion that the Memorandum of Understanding (the "Memorandum") executed by your respective campaigns, a copy of which has been provided to us, appears to envision debates that comport with and further the Commission's nonpartisan, educational mission.

The Commission's acceptance is subject to the following conditions and understandings:

- (1) The Commission's sponsorship is expressly contingent upon the ongoing validity of the conclusion that the debates envisioned by the Memorandum will comport with the Commission's nonpartisan educational mission;
- (2) The Commission has determined, pursuant to the recommendation of its nonpartisan advisory committee on candidate selection, that H. Ross Perot and Adm. James Stockdale should be invited to participate in the October 11 and 13, 1992 debates, respectively. The Commission will make its candidate participation determination regarding the October 15 and 19 debates after the initial debates. The Commission understands

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Mr. Robert M. Teeter Mr. Mickey Kantor October 6, 1992 Page 2

that, if it subsequently determines not to invite Mr. Perot to additional debates under its sponsorship, you each reserve the right to seek an alternative sponsor for these debates;

- (3) The Commission understands that Mr. Perot finds the terms of the Memorandum to be acceptable; and
- (4) The Commission has undertaken to provide an opportunity for the University of Richmond community to participate in the October 15 debate. The Commission's acceptance is subject to the understanding that suitable arrangements will be made for a modest number of representatives of the University of Richmond to attend the debate in Richmond. The Commission, working with University officials, will take all reasonable measures to attempt to ensure that the attendees do not interfere with the debate.

Please advise us at your earliest opportunity if these conditions are acceptable to you.

Yours sincerely,

COMMISSION ON PRESIDENTIAL DEBATES

By:

Paul G. Kirk, Jr.

Co-Chairman

Bu.

Frank J. Fahrenkopf, Jr.

Co-Chairman

cc: R. Clayton Mulford, Esq. (via facsimile)
Bobby Burchfield, Esq. (via facsimile)
Tom Donilon, Esq. (via facsimile)

October 7, 1992

#### VIA FACEINILE

Mr. Robert M. Teeter Campaign Chairman Bush/Quayle '92 1030 15th Street, M.W. Washington, D.C. 20005

Mr. Wickey Kantor Mational Campaign Chair Clinton/Gore '92 Mational Campaign Headquarters P.O. Box 615 Little Bock, AX 72203

#### Gentlemen:

The Board of Directors of the Commission on Presidential Debates convened a special meeting today to review changed circumstances since our letter to you of October 6, 1992. Paragraph (2) of the aforementioned letter of October 6 is hereby amended by the Commission to provide as follows:

(2) The Commission has determined that H. Ross Perot should be invited to participate in the October 11, 15, and 19 presidential debates and that Admiral James Stockdale should be invited to participate in the October 13 vice presidential debate.

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Mr. Robert M. Teeter Mr. Mickey Kentor October 6, 1992 Page 2

In all other respects, our letter of October 6, 1992 stands as submitted. If we do not hear from you to the contrary by 4:00 p.m. today, we will assume you are in full agreement and we will proceed accordingly.

Yours sincerely.

COMMISSION ON PRESIDENTIAL DEBATES

By:

Paul G. Kirk,

Co-Chairman

Zeenk J. Pa Co-Chairman

R. Clayton Mulford, Esq. (via facsimile) Bobby Burchfield, Esq. (via facsimile) Tom Donilon, Esq. (via facsimile) GGI

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September 17, 1996

Mr. Paul G. Kirk, Jr.
Mr. Frank J. Fahrenkopf, Jr.
Commission on Presidential Debates
601 13th Street, N.W.
Washington, D.C. 20005

### Dear Chairman Kirk end Chairman Fahrenkopf:

The Advisory Committee has been asked to review the electoral prospects of minor party candidates in light of the latest available data on the Commission's criteria, and then to judge, by the Commission's standard for admission to its debates, whether each candidate does or does not have a realistic chance of becoming President of the United States next January 20. The chance need not be overwhelming but must be more than theoretical. An affirmative answer to that question is the only basis, under long-established policy, for the Commission to invite him or her to the debates it sponsors. That single standard ("realistic chance") is for the Commission to apply. This Committee merely offers its advisory judgment.

The electoral principle behind the Commission's single standard is, as we understand it, that this Fall's debates, coming at the end of a year-long nomination and election process, should help the voters face the actual choice before them, and therefore ought to be as realistic as possible. Since 1987, you, the Commissioners, have stressed, rightly in our view, that your debates should be confined to the presidential and vice presidential candidates who will be sworn in next January, along with their principal rivals.

"Realistic chance" is meant to focus attention on that real choice.

We began with Mr. Ross Perot, now of the Reform Party. We have reviewed the data your staff has assembled for us, supplemented by telephonic inquiries of our own to political scientists and political journalists across the country. We have concluded that, at this stage of the campaign, Mr. Perot has no realistic chance either of popular election in November or of subsequent election by the House of Representatives, in the event no candidate obtains an Electoral College majority. None of the expert

Chairman Kirk and Chairman Fahrenkopf September 17, 1996 Page 2

observers we have consulted thinks otherwise. Some point to possibilities of extraordinary events later in the campaign, but grant that those possibilities do not change the likelihoods as of today.

Four years ago, we confronted an unprecedented condition when Mr. Perot rejoined the campaign in October. We were mindful that the preceding Spring, before his withdrawal, he had registered approximately 40 percent in the polls, and that upon rejoining the campaign, he could spend unlimited funds on television campaigning. Unable to predict the consequences of this combination, we agreed that he must be presumed to have a remote chance of election, should he do well enough so that no one else won a majority of electoral votes. His chances in the House of Representatives we found incalculable. So, we concluded that his prospect of election was unlikely but not unrealistic.

With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a federal subsidy, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

Moving on to the other minor party candidates, we find no one with a realistic chance of being elected President this year. Applying the same standard and criteria to them individually as to Mr. Perot, our response is again "no" in each case. The observers we have consulted take the same view. Three of the minor party candidates, in addition to Mr. Perot, do have a theoretical chance of 'ection in November, by virtue of placement on the ballots of enough states to produce an Electoral college majority. We do not, however, see their election as a realistic possibility.

Therefore, the Advisory Committee unanimously concludes at this time that only President Clinton and Senator Dole qualify for admission to CPD's debates. We stand ready to reconvene should present circumstances change.

Sincerely yours,

In

Richard E. Neustadt

For the Advisory Committee on Candidate Selection

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Richard E. Neustadt, Chairman

Diana Prentice Carlin

Dorothy S. Ridings

Kenneth W. Thompson

Eddie N. Williams

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1200 New Hampshire Avenue, N.W. • Suite 445. • Washington, D.C. 20036. • (202) 872-1020. • Fax (202) 783-5923.

Embargoed for release until

10:00 a.m. EST,

Thursday, January 6, 2000

Contact: John Scardino (202) 737 7733

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Janet Brown (202) 872 1020

**Executive Director** 

### COMMISSION ON PRESIDENTIAL DEBATES ANNOUNCES CANDIDATE SELECTION CRITERIA, SITES AND DATES FOR 2000 DEBATES

(Washington, D.C....) Commission on Presidential Debates (CPD) co-chairmen Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. today announced the candidate selection criteria to be used in the 2000 general election debates as well as the dates and sites for the debates.

Kirk and Fahrenkopf noted that after each of the last three general elections, the CPD had undertaken a thorough review of the candidate selection criteria used in that year's debates. After extensive study, the CPD has adopted a three-part standard for 2000 which is detailed in the attached document. "The approach we announce today is both clear and predictable," Kirk and Fahrenkopf said.

The CPD co-chairmen also announced four dates and sites for the 2000 debates:

- First presidential debate: Tuesday, October 3, John F. Kennedy Library and the University of Massachusetts, Boston, MA
- Vice presidential debate: Thursday, October 5, Centre College, Danville, KY
- Second presidential debate: Wednesday, October 11, Wake Forest University, Winston-Salem, NC
- Third presidential debate: Tuesday, October 17, Washington University in St. Louis, MO
- Madison, WI and St. Petersburg, FL have been selected as alternate sites.

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The CPD intends to make extensive use of the Internet in its 2000 educational efforts, building on its 1996 voter outreach program, DebateWatch '96. Details of the CPD's Internet activities, which will be supported by corporate and nonprofit entities specializing in interactive application of the Internet, will be announced in the next several weeks. Background information on the CPD's mission, history and educational projects is available on its website: www.debates.org. The CPD will collaborate with the Freedom Channel in its work.

(more)

Co-chairmen Frank J. Fahrenkopt, Jr.

Paul G Kirk, Jr Executive Director

Janet H. Brown

Honorary Co-chairmen Gerold R. Ford Jimmy Carter Ronald Reagan

Directors Clittord L. Alexander, Jr. Howard G Buffett Senator Paul Coverdell John C Danforth Representative Jennifer Dunn

Antonia Hemandez Caroline Kennedy Newton N Minow **Dorothy Ridings** 

# COMMISSION ON PRESIDENTIAL DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION

#### A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past three general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2000 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In the last two elections, there were over one hundred declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2000 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2000 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

#### B. 2000 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in its 2000 general election presidential debates are:

#### 1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

(more)

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

#### 2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2000 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College (at least 270 votes), regardless of the popular vote, is elected President.

#### 3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

#### C. APPLICATION OF CRITERIA

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2000, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: January 5, 2000

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#### Copyright 2000 The Baltimore Sun Company THE BALTIMORE SUN

October 18, 2000, Wednesday ,FINAL

**SECTION: EDITORIAL, 24A** 

LENGTH: 327 words

HEADLINE: Voters win as debates surpass expectations

Contrasts: Presidential encounters showed us very different personalities and programs.

#### BODY:

SAY WHAT YOU will about substance and style, there's more than a dime's worth of difference between Republican George W. Bush and Democrat Al Gore.

The presidential debates, which concluded last night in a format that brought real people into the conversation, were illuminating despite a governing caution that throttled more probing exchanges.

Clearly, though, each of the major candidates would do different things with the budget surplus, Social Security and taxes. They see the handling of a Medicare prescription drug benefit quite differently, and they are poles apart on social issues.

In each area, voters should have a clear picture and solid basis for deciding which ideas they prefer. These differences, which both tried to accentuate again last night, include the way each man handled himself: self-confidence, grasp of issues, humor and leadership potential.

Facts and figures are one thing. But which of the two would you want handling the economy that will affect your job and family?

Maybe you didn't like Al Gore's lugubrious voice or his sometimes haughty way of speaking or his famous sighs. Maybe you don't want to be led by someone who seems to think he's smarter than you are and wants you to know it.

Maybe Mr. Bush offended you with his flippant and gratuitous observation that Al Gore employed "fuzzy math" and probably invented the calculator. Maybe you thought his handlers fed him those lines. Maybe you thought the Texas governor was distracting us from a real look at the depth of his knowledge.

Did you see class warfare in Mr. Gore's assertions that much of the Bush tax cut would go to the rich?

Did you think Mr. Bush seemed a little too happy about Texas executing people?

The answers will differ depending upon whom you ask. It seems very likely, though, that the answers are a bit different now that this series of debates provided voters an opportunity for instructive side-by-side comparisons.

LOAD-DATE: October 19, 2000

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View Related Topics

October 18, 2000 Wednesday FIRST EDITION

**SECTION: EDITORIAL; Pg. 034** 

**LENGTH:** 378 words

**HEADLINE:** Editorial; Why watch debates: Clues to candidates

#### BODY:

At the point of the final debate of the presidential campaign, George W. Bush held a slight lead in the latest polls, apparently because people saw him as a better leader and more trustworthy.

Vice President Al Gore was favored on issues like the economy, Social Security and foreign policy.

But a presidential campaign is only a little bit about what pollsters can call "issues" when asking questions. Voters know that tomorrow's issues may be utterly different from today's. (Who today remembers what John F. Kennedy's stand on Quemoy and Matsu was during his 1960 debate with Richard Nixon?)

No, voters want to back candidates who they believe can handle the unforeseen.

Voters pay attention to debates to get clues to qualities that have no direct bearing on current issues. What they learn has a lot to do with how they answer questions about trust and leadership.

Voters want to understand how the candidates approach problems. They don't give a horse's patootic whether one of them mispronounces the word "subliminal" with an extra syllable or two, whether one knows the name of the latest dictator of Pakistan or whether one is trustee over some oil company stock for his mother. They are trying to draw conclusions about how the candidate will deal with Third-World dictators in a crisis and whether he has a sensible energy policy.

To make these judgments voters have to rely on common sense. This is why looking at a watch in the middle of debate can hurt, as it hurt Bush's father in a debate against Bill Clinton in 1992. In real life, that signifies you'd rather be somewhere else - and that's rude in a presidential debate. This is why voters don't like interruptions and snorts into the microphone. Those too are rude. This is why voters wonder about a "deer in the headlights" look: a man who looks startled probably is startled, and the question arises whether he has or should have grounds to feel that way.

Professionals consult polls, academics consult mathematical formulas and voters look at the record, consult their neighbors and watch the candidates. Whoever wins, the voters are usually more conscientious than the pros and the profs think, and the three presidential debates this year have been an enormous help to them.

LOAD-DATE: October 18, 2000

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# Copyright 2000 Chicago Sun-Times, Inc. Chicago Sun-Times

October 18, 2000, WEDNESDAY, Late Sports Final Edition

**SECTION: EDITORIAL; Pg. 55** 

LENGTH: 375 words

**HEADLINE:** Debate informative, but not decisive

**BYLINE: EDITORIALS** 

#### RODY:

The gloves came off in the third and final round of the presidential debates, but no knockout was scored.

George W. Bush attacked Al Gore for proposing big-spending big-government programs, for the failure of the Clinton administration to reform Social Security or cut taxes for the middle class, and for now proposing tax cuts only for "the right people." Gore counterpunched by claiming Bush would give more in tax cuts to the "wealthiest 1 percent" than new spending for education, health and national defense and by claiming for the Democrats the record run of prosperity.

Gone was the gentler, kinder Gore of the second debate. He came out charging and going on the attack, interrupting Bush and even the moderator. Bush showed irritation at some of Gore's attacks but seemed determined to remain more conciliatory throughout most of the debate. The format that enabled the two men to walk around the stage in answering questions from the audience allowed for some posturing not unlike the blustering of a couple of guys in a bar. Bush, who employed humor a time or two, got off the best line of the night when he said, "If this were a spending contest, I would come in second."

Still, clearly competing visions of where the country should go were presented during the 90 minutes. Gore styled himself as a fighter who would take on the big drug companies, provide tax relief for middle class families and balance the budget and pay down the debt every year. Bush persuasively offered himself as a proven leader who can unite the warring parties in Washington, who would give tax cuts to all Americans and who trusts Americans to make decisions about their own lives. There were sharp exchanges over Social Security, prescription drugs, education, guns and their respective records in office.

Were many votes changed? That remains to be seen. Now that the debates are over, the contest returns to the newspaper columns, newscast sound bites and campaign ads. The debates provided lively, informative exchanges of views and a chance to watch the two men under the intense, albeit artificial, pressure of head-to-head confrontations over the issues. The debates made a difference; just how big a difference we'll find out Election Day.

LANGUAGE: English

LOAD-DATE: October 19, 2000

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# COMMISSION ON PRESIDENTIAL DEBATES

WE ABOUT CPD DEBATE HISTORY MEDIA VOTER EDUCATION SITEM

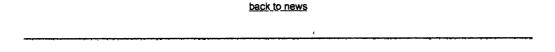
News: Commission on Presidential Debates Releases 2004 Candidate Selection Criteria

The Commission on Presidential Debates (CPD), which has sponsored all general election presidential debates since 1988, today released its Candidate Selection Criteria for the 2004 general election presidential debates. <u>View the Candidate Selection Criteria.</u>

CPD co-chairmen Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr. noted that after each of the last four general elections, the CPD had undertaken a review of the candidate selection criteria used in that year's debates. After studying the criteria used in 2000, the CPD board of directors unanimously adopted the same three-part standard for 2004. "The Commission believes this approach is both clear and straightforward," Kirk and Fahrenkopf said.

As in 2000, Frank Newport, editor-in-chief of the Gallup Poll, will serve as a consultant to the CPD in connection with the application of the 2004 criteria.

Established in 1987, the CPD is the non-partisan, non-profit, tax-exempt, (501)(c)(3) organization that sponsored the presidential debates in 1988, 1992, 1996 and 2000. The CPD will announce sites and dates for the 2004 debates in November, 2003.



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**About CPD:** Candidate Selection Process

COMMISSION ON PRESIDENTIAL DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA FOR 2004 GENERAL ELECTION **DEBATE PARTICIPATION** 

#### A. INTRODUCTION

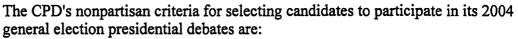
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In connection with the 2004 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

#### **B. 2004 NONPARTISAN SELECTION CRITERIA**





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Adopted: September 2003

SEE ALSO: 2000 Candidate Selection Criteria

1996 Candidate Selection Criteria

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Thursday, January 6, 2000

Contact: John Scardino (202) 737 7733

Media Director, or

Janet Brown (202) 872 1020

Executive Director

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(more)

Co-chairmen

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Directors Clifford L. Alexander, Jr. Howard G Buffett Senator Paul Coverdell John C Danforth Representative Jennifer Dunn

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# COMMISSION ON PRESIDENTIAL DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION

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This Memorandum of Understanding constitutes an agreement between Gore/Lieberman Inc. and Bush/Cheney 2000, Inc. (the "campaigns") regarding the rules that will govern debates in which the campaigns participate in 2000. This agreement shall be binding upon the Bush/Cheney and Gore/Lieberman campaigns and, if it agrees to sponsor the debates, upon the Commission on Presidential Debates (the "Commission").

#### 1. Number, Dates, Time, Locations

(a) Presidential Debates

Date	Location .
October 3	University of Massachusetts, Boston, Massachusetts
October 11	Wake Forest University, Winston-Salem, North Carolina
October 17	Washington University, St. Louis, Missouri

- (b) Vice Presidential Debate
  - Date Location
    October 5 Centre College, Danville, Kentucky
- (c) Each debate shall begin at 9 p.m., EDT.
- (d) The parties agree that they will not (1) issue any challenges for additional debates. (2) appear at any other debate or adversarial forum with any other presidential or vice presidential

Memorandum of Understanding draft 9/28/00 Page 2

candidate, or (3) accept any network air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate.

## 2. Sponsorship

The two campaigns will participate in four debates sponsored by the Commission on Presidential Debates ("Commission") or if the Commission declines, another entity. The parties agree that the Commission's Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation shall apply to determining the candidates to be invited to participate in these debates.

## 3. Participants

If one or more candidates from campaigns other than the two (2) eignatories is invited to participate pursuant to those Selection Criteria, those candidates shall be included in the debates, if those candidates accept the terms of this agreement. Any modifications to this agreement must be agreed upon by each of the signatories to this agreement as well as all other candidates selected to join the debate.

### 4. Moderator

(a) Each debate will have a single moderator.

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Memorandum of Understanding draft 9/28/00 Page 3

- (b) The parties have accepted the Commission's recommendation of Jim Lehrer as moderator for the three Presidential debates, and of Bernard Shaw for the Vice Presidential debate.
- 5. Rules Applicable to All Debates

  The following rules shall apply to each of the four debates:
  - (a) Each debate shall last for minety (90) minutes.
  - (b) For each debate there shall be no opening statements.

    but each candidate may make a two (2) minute closing statement.
  - (c) No props, notes, charts, diagrams, or other writings or other tangible things may be brought into the debate by any candidate. If a candidate uses a prop, note, or other writing or other tangible thing during a debate, the moderator must interrupt and explain that the use of the prop, note, or other writing or thing violates the debate rules agreed to by that candidate.
  - (d) Notwithstanding subparagraph 5(c), the candidates may take notes during the debate on the size, color, and type of paper each prefers and using the type of pen

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Memorandum of Understanding draft 9/25/00 Page 4

or pencil that each prefers. Each candidate must submit to the staff of the Commission prior to the debate all such paper and any pens or pencils with which a candidate may wish to take notes during the debate, and the staff of the Commission will place such paper, pens, and pencils on the podium, table, or other structure to be used by the candidate in that debate.

- (c) Neither film footage nor video footage nor any audio excerpts from the debates may be used publicly by either candidate's campaign through any means, including but not limited to, radio, television, Internet or videotapes, whether broadcast or distributed in any other manner.
- (f) The candidates may not ask each other direct questions, but may ask rhatorical questions.
- (g) The order of questioning and closing statements shall be determined as follows:
  - (1) The Commission will conduct a coin toss at least 72 hours before the first Presidential debate. At that time, the winner of the coin toss shall have the option of choosing, for

Memorandum of Understanding draft
9/28/00
Page 5

the october 3 debate, either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement. At that time, the loser of the coin toss will have the choice of question order or closing statement order not exercised by the winner of the coin toss. For the October 11 debate, the loser of the coin tosa shall have the option of choosing either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement, with the winner of the coin toss having the choice of question order or closing statement not exercised by the loser of the coin toss. The Commission shall set a time at least 72 hours before the October 11 debate at which the candidates shall make their choices for that debate.

(ii) For the October 17 debate, the order of questioning and closing statements shall be determined by a separate coin toss in the same

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manner as for the October 3 debate, to take place at least 72 hours before the debate.

- statements for the October 5 Vice Presidential debate shall be determined by a separate coin toss in the same manner as for the October 3 debate, to take place at least 72 hours before the debate.
- (h) Each candidate shall determine the manuar by which he prefers to be addressed by the moderator and shall communicate this to the Commission, at least forty-eight (48) hours before the October 3 debate.
- (i) Whether or not a debate runs beyond the planned ending time, each candidate shall be entitled to make a closing statement in accordance with subparagraph (b). The Commission shall use its best efforts to ensure that the TV networks carry the entire debate even if it runs past the specified ending time.
- (j) No question shall be asked of a candidate by the moderator if less than six minutes remain in the scheduled time of the debate.

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- (k) The candidates shall not address each other with proposed pledges.
- (1) In each debate, the moderator shall:
  - (i) Open and close the debate and use his or her best efforts to enforce all time limits;
  - (ii) use his or her best efforts to ensure that the questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world;
  - (iii) vary the topics on which he or she questions the candidates and ensure that the topics of the questions are fairly apportioned between the candidates;
  - (iv) use best efforts to ensure that the two candidates speak for approximately equal amounts of time during the course of each debate; and
  - (v) use any reasonable method to ensure that the agreed-upon format is followed by the candidates and the audience.

6. Additional Rules Applicable to October 3 Debate

For the October 3 debate, the candidates will appear at podiums. This debate shall be governed by the rules set forth in section 5 and the following additional rules:

- (a) The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g). The candidate receiving the question shall be entitled to give an opening response not to exceed two (2) minutes, and thereafter the other candidate shall be permitted to comment on the question and/or the first candidate's answer for up to one (1) minute. Thereafter the moderator may extend the discussion for a period of time not to exceed three and one-half (3%) minutes, but the moderator shall begin each such discussion by calling upon the candidate who first received the question.
  - (b) The moderator shall then ask a question of the other candidate, and the answer. comments by the other candidate, and extension of discussion by the moderator shall be conducted as set out in paragraph 6(a) above for the first question.

    Thereafter the moderator shall follow the procedure in

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paragraph 6(a) above by asking a question of the first candidate and shall continue with questions of the candidates in rotation until the time for closing statements occurs.

- (c) During the extended discussion of a question, no candidate may speak for more than 2 minutes at one time.
- (d) The moderator shall manage the debate so that the candidates address at least fourteen (14) questions.
- 7. Additional Rules Applicable to October 11 Debate

  For the October 11 debate, the candidates will be
  seated at a table. This debate shall be governed by the rules
  set forth in section 5 and the following additional rules:
  - (a) The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g). That candidate shall have up to two (2) minutes to respond to the question, and the other candidate then shall have up to two (2) minutes to comment on the question or on the first candidate's answer. Thereafter, the moderator shall have discretion to extend the discussion of that question, but shall balance additional discussion of that

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question with the interest in addressing a wide range of topics during the debate.

- (b) After completion of the discussion of the first question, the moderator shall then direct a question to the candidate to whom the first question was not directed, and follow the procedure outlined in paragraph 7(a) above. Thereafter, the moderator shall follow the procedure in paragraph 7(a) by asking a question of the (itst candidate and shall continue with questions of the candidates in rotation until the time for closing statements occurs.
- (c) During the extended discussion of a question, no candidate may speak for more than two (2) minutes at one time.
- The October 17 debate will be conducted in an audience participation ("town hall") format. This debate shall be governed by the rules set forth in section 5 and the following additional rules:
  - (a) The moderator shall facilitate audience members in asking questions to each of the candidates, beginning with the candidate determined by the procedure sat

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forth in subparagraph 5(g). The candidate to whom the question is initially directed shall have up to two (2) minutes to respond, after which the other candidate shall have up to two (2) minutes to respond to the question and/or to comment on the first candidate's answer. Thereafter, the moderator shall have discretion to extend the discussion of the question, but shall balance additional discussion of the question with the interest in addressing a wide range of topics during the debate.

(b) After completion of the discussion of the first question, the moderator shall call upon an audience member to direct a question to the candidate to whom the first question was not directed, and follow the procedure outlined in paragraph 8(a) above.

Thereafter, the moderator shall follow the procedures in paragraph 8(a) by calling upon another audience member to ask a question of the first candidate and shall continue facilitating questions of the candidates in rotation until the time for closing statements occurs.

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- (c) During the extended discussion of a question, no candidate may speak for more than two (2) minutes at one time.
- (d) The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the question.
- will be asked to submit their questions in writing to the moderator. We third party, including both the Commission and the compaigns, shall be permitted to see the questions. The moderator will review the questions and sliminate any questions that the moderator deems inappropriate. The moderator shall develop, and describe to the campaigns, a method for selecting questions at random while ascuring that questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world. Each question selected will be asked by the audience member submitting that question.

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(f) The debate will take place before a live audience of between 100 and 150 persons who shall be seated and who describe themselves as likely voters who are "uncommitted" as to their 2000 Presidential vote.

These participants will be selected by an independent research firm agreed upon by the two campaigns. The research firm shall have sole responsibility for selecting the nationally demographically representative group of voters, after providing a comprehensive briefing to the campaigns, either of which may raise objections to the Commission within 24 hours of the briefing.

- (g) Participants selected shall not be contacted directly or indirectly by the campaigns before the debate. The Commission shall not contact the participants before the debate other than for logistical purposes.
- 9. Additional Rules Applicable to October 5 Debate

  for the October 5 Vice Fresidential debate, the

  candidates will be seated at a table. This debate shall be

  governed by the rules set forth in sections 5 and 7.

#### 10. Staging

(a) The following rules apply to each of the four debates:

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- (i) All staging arrangements for the debates not specifically addressed in this agreement shall be jointly addressed by representatives of the two campaigns.
- Governor Bush shall occupy the stage-left {i1} position for the October 3 debate; Vice President Gore will have first choice of stage position for the October 11 debate. Vice President Gore or his representative shall communicate his choice by written factimile to the Commission and to Bush/Cheney 2000 at least seventy-two (72) hours before the debate. The stage position for the October 17 debate will be determined by a coin toss to take place at least seventy-two (72) hours before the debate. The stage position for the October 5 Vice Presidential debate will be determined by a separate coin toss to take place at least seventy-two (72) hours before the debate.
  - (iii) for the October 3 and October 17 debates, the candidates shall enter the stage upon a verbal

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the air, proceed to center stage, shake hands, and proceed directly to their positions behind their podiums (for the October 3 debate) or to their stools (for the October 17 debate). For the October 5 and October 11 debates, the candidates shall be pre-positioned before the program goes on the air.

- (iv) Except as provided in subparagraph (d) (vili).

  TV cameras will be locked into place during
  all debates. They may, however, tilt or
  rotate as needed.
- (v) Except as provided in subparagraph (d) (viii).

  TV coverage during the question and answer

  period shall be limited to shots of the

  caudidates or moderator and in no case shall

  any television shots be taken of any member of

  the audience (including candidates' family

  members) from the time the first question is

  asked until the conclusion of the closing

  statements. When a candidate is speaking,

  either in answering a question or making his

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closing statement. TV coverage will be limited to the candidate speaking. There will be no TV cut-aways to any candidate who is not responding to a question while another candidate is answering a question of to a candidate who is not giving a closing statement while another candidate is doing so.

- (vi) The camera located at the rear of the stage shall be used only to take shots of the moderator.
- have either (a) a monitor with live feed from the debate positioned in his line of sight but not visible to the other candidate; or (b) tally lights in his line of sight mut not visible to the other candidate. In either case, the candidate other than the candidate choosing a monitor or tally lights shall have for each debate a right of disapproval, in his sole discretion, over the use of such monitor or tally lights.

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by the moderator before the debate goes on the air and by the moderator after the debate goes on the on the air not to applaud or otherwise participate in the debate by any means other than by silent observation. The moderator chall use his or her best efforts to enforce this provision.

- (ix) The Commission shall use best efforts to maintain an appropriate temperature according to industry standards for the entire debate.
- complete, private production and technical briefing and walk-through ("Briefing") at the location of the debate on the day of the debate. The order of the Briefing shall be determined by agreement or, failing candidate agreement, a coin flip. Each candidate will have a maximum of one (1) hour for this Briefing. Production lock-down will not occur for any candidate unlass that candidate has had his Briefing. There will be no filming,

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taping, photography or recording of any kind (except by that candidate's personal photographer) allowed during the candidates' Briefing. No media will be allowed into the auditorium where the debate will take place during a candidate's Briefing. All persons, including but not limited to the media, other candidates and their representatives, and the employees or other agents of the Commission other than those necessary to conduct the Briefing, shall vacate the debate site while a candidate has his Briefing. The Commission will provide to each candidate's representatives a written statement and plan which describes the measures to be taken by

the Commission to ensure the complete privacy

(xi) The color and style of the backdrop will be recommended by the Commission and mutually determined by representatives of the campaigns. The Commission shall make its recommendation known to the campaigns at least

of all Briefings.

seventy-two (72) hours before each debate.

The backdrops behind each candidate shall be identical.

- (xii) The set will be completed and lit no later than 3 p.m. at the debate site on the day before the debate will occur.
- (xiii) Each candidate may use his own makeup person, and adequate facilities shall be provided at the debale site for makeup.
- Vice President's military aide, and the Vice President's physician, each candidate will be permitted to have one (1) pre-designated staff member in the wings or in the immediate backstage area during the debate at a location to be mutually agreed upon by representatives of the campaigns at each site. All other staff must vacate the wings or immediate backstage areas no later than (5) minutes before the debate commences. A PL phone line will be provided between each candidate's staff work area and the producer.

- (xv) Other than security personnel, not note than two (2) aides will accompany each candidate on the stage before the program begins.
- (xvi) Each candidate shall be allowed to have one

  (1) professional still photographer present on
  the stage before the debate begins end in the
  wings during the debate, as desired, and on
  the stage immediately upon the conclusion of
  the debate. We photos shall be taken from the
  wings by these photographers during the
  debate. Photos taken by these photographers
  may be distributed to the press as determined
  by each candidate.
- (b) In addition to the rules in subparagraph (a), the following rules apply to the October 3 debate:
  - and each shall be identical to view from the audience side. The podiums shall measure forty-eight (48) inches from the stage floor to the outside top of the podium facing the audience and otherwise shall be constructed in the style and specifications recommended by

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the Commission, shown in Attachment A. There shall be no writings or markings of any kind on the fronts of the podiums. No candidate shall be permitted to use risers or any other device to create an impression of elevated height, and no candidate shall be permitted to use chairs, stools or other seating devices during the debate.

- (ii) Each podium shall have installed a fixed hardwired microphone, and an identical microphone to be used as backup per industry standards.
- (iii) The podiums will be equally canted toward the center of the stage at a degree to be determined by the Commission's producer. The podiums shall be ten (10) feet apart; such distance shall be measured from the left-right center of a podium to the left-right center of the other podium.
- (iv) The moderator will be seated at a table so us to be positioned in front, between, and equidistant from the candidates, and between

the cameras to which the candidates direct their answers.

- (v) As soon as possible, the Commission shall submit for joint consultation with the campaigns a diagram for camera placement.
- of time cues and placement subject to approval by both campaigns. Time cues in the form of yellow and red lights will be given to the candidates and the moderator when there are thirty (30) seconds remaining and fifteen (15) seconds remaining respectively for the two (2) minute and one (1) minute responses permitted under section 6(2).
- (c) In addition to the rules in subparagraph (a), the following rules apply to the October 11 debate and the October 5 Vice Presidential debate:
  - (1) The Commission shall construct the table according to the style and specifications proposed by the Commission in consultation with each campaign. The moderator shall be

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facing the candidates with his or her back to the audience.

- (ii) The chairs shall be swivel chairs that can be locked in place, and shall be of equal height.
- (iii) Each candidate and the moderator shall have a wireless lapel microphone, and an identical microphone to be used as a backup per industry standards.
- (iv) The Commission shall recommend a single system of time cues and placement subject to approval by both campaigns.
- (v) As soon as possible, the Commission shall submit for joint consultation with each campaign a diagram for camera placement.
- (vi) The candidates shall remain seated throughout the debate.
- (d) In addition to the rules in subparagraph (a), the following rules apply to the October 17 debate:
  - (i) The candidates shall be seated on stools

    before the audience, which shall be seated in
    approximately a horseshoe arrangement as

    symmetrically as possible around the

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candidates. The precise staying arrangement will be determined by the Commission's producer subject to the approval of representatives of both campaigns.

- (11) The stools shall be identical and have backs and a footrest and shall be approved by the candidates' representatives.
- (iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with subparagraph 5(d)) of sufficient height to allow note taking while sitting on the stool, and which shall be designed by the Commission, subject to the approval of representatives of both campaigns.
- (iv) Each candidate may move about in a predesignated area, as proposed by the Commission
  in consultation with each campaign, and may
  not leave that area while the debate is
  underway. The pre-designated areas of the
  candidates may not overlap.

- (v) Each candidate shall have a choice of either wireless hand held microphone or wireless lapel microphone to allow him to move about as provided for in subparagraph (iv) and to face different directions while responding to questions from the audience.
- (v1) As soon as possible, the Commission shall submit for joint consultation by the campaigns a diagram for camera placement.
- (vii) The Commission shall recommend a single system of time cues subject to approval by both campaigns.
- (viii) Notwithstanding subparagraphs (a) (iv) and

  (a) (v) a roving camera may be used for shots

  of an audience member only during the time

  that audience member is asking a question.

# 11. Ticket Distribution and Seating Arrangements

(a) The Commission shall be responsible for printing and ensuring security of all tickets to all debates. Each campaign shall be entitled to receive directly from the Commission one-third of the available tickets (excluding those allocated to the participating

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audience in the October 17 debate), with the remaining one-third going to the Commission.

- (b) In the audience participation debate, the participating audience shall be separated from any nonparticipating audience, and steps shall be taken to ensure that the participating audience is admitted to the debate site without contact with the campaigns, the media, and the nonparticipating audience.
- campaigns in such a manner to ensure that supporters of each candidate are interspersed with supporters of the other candidate. For the October 3, October 5, and October 11 debates, the family members of each candidate shall be seated in the front row, diagonally across from the candidate directly in his line of site while seated or standing at the podium. For the . October 17 debate, the family members of each candidate shall be seated as mutually agreed by representatives of the campaigns.
- (d) Any media seated in the auditorium shall be accommodated only in the last two (2) rows of the auditorium farthest from the stage. Two (2) still

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photo stands may be positioned near either side of the television camera stands located in the audience. (A media center with all necessary feeds will be otherwise available.)

(e) Tickets will be delivered by the Commission to the chairmen of each candidate's campaign or his designated representative by 12:00 noon on the day preceding each debate.

The Commission will invite from its allotment (two (2) tickets each) an agreed upon list of officeholders such as the U.S. Senate and House Majority and Minority Leaders, the Governor and Lieutenant Governor of the State holding the debate, an appropriate list of other public officials and the President of the University sponsoring the debate. The Commission shall use its best efforts not to favor one tandidate in the distribution of its allotment of tickets.

# 12. Dressing Rooms/Holding Rooms

(a) Each candidate shall have a dressing room available of adequate size so as to provide private seclusion for that candidate and adequate space for the staff the candidate desires to have in this area. The Lvo dressing rooms shall be comparable in size and in

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quality and in proximity and access to the debate stage.

An equal number of other backstage rooms will be **(b)** available for other staff members of each candidate. Each candidate shall have a minimum of eight such rooms, five of which shall be in the debate facility itself, and three of which shall be located next to the press center. The rooms located next to the media center shall be located so that each campaign has equal proximity and ease of access to the media center. Each of the eight rooms shall be a minimum of 10 feet by 10 feet. All of these rooms shall be furnished as deemed necessary by the candidates' representatives. Each candidate's rooms shall be reasonably segregated from those designated for the other candidate. If sufficient space to accommodate the above needs in not available at a particular debate facility, the Commission shall provide trailers or alternative space mutually agreeable to the candidates' representatives. Space that is comparable in terms of size, location, and quality shall be provided to the two campaigns. These rooms shall be

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made available at least seventy two (72) hours in advance of the beginning of each debate. Each campaign may, at its own cost, rent one or more additional trailers so long as the Commission and authorities responsible for traffic and security do not object.

- (c) The number of individuals allowed in these rooms or trailers shall be determined by each candidate. The Commission shall issue backstage passes (if needed) to the candidates' representatives as requested.
- direct television feed from the production truck to two (2) monitors placed in the candidate's dressing room and staff holding rooms as requested by the candidates' representatives. In addition, the Commission shall provide at least one (1) additional functioning TV set for each of the eight rooms.

### 13. Media

(a) Each candidate will receive not fewer than thirty (30)

press passes for the Media Center during the debate

and more if mutually agreed upon by the Committees.

- (b) Each candidate will be allowed to have an unlimited number of people in the Media Center upon the conclusion of the debate.
- (c) The Commission will be responsible for all media credentialing.

### 14. Survey Research

The sponsor of the debates shall agree that it shall not, prior to November 8, 2000, release publicly or to the media or otherwise make publicly available any survey research (including polls or focus group results or data) concerning the performance of the candidates in the debate or the preferences of the individuals surveyed for either candidate.

### 15. Complete Agreement

This memorandum of understanding constitutes the entire agreement between the parties concerning the debates in which the campaigns participate in 2000. It supersedes the Preliminary Agreement between the parties signed on September 16, 2000, which Preliminary Agreement is now null and void.

#### 16. Amendments

This Agreement will not be changed or amended except in writing signed by both persons who signed this Agreement or their designees.

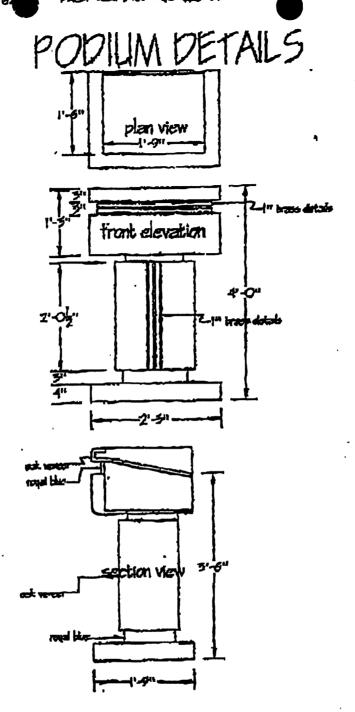
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# COMMISSION ON PRESIDENTIAL DEBATES

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**News:** CPD Issues Terms of Invitation

#### **MEDIA ADVISORY**

WASHINGTON, DC, June 21, 2000 -- Commission on Presidential Debates announces terms of invitation to 2000 general election debates

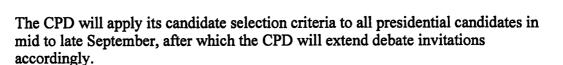
#### **BACKGROUND**

- Since 1976, all leading presidential candidates have participated in nationally televised general election debates.
- The American electorate has come to expect nationally televised presidential debates in each general election.
- During the last three general election cycles, TV audiences have ranged from 50 million to 97 million viewers per debate.
- The nonpartisan, nonprofit Commission on Presidential Debates (CPD) has sponsored and produced the ten general election presidential debates since 1987.
- To adjust to schedules of nationally televised sports events, to accommodate other obligations of presidential campaigns and to strive for a maximum viewing audience, the CPD attempts to judiciously schedule the debates on dates with minimal conflicts.

#### COMMISSION ON PRESIDENTIAL DEBATES 2000 SCHEDULE

- To provide early notification to the public, candidates and media of CPD's planning, on January 6, 2000 (nine months in advance of the first scheduled debate) the CPD announced the candidate selection criteria as well as the number, dates, sites and times for the 2000 general election debates. Since that time, the designated host sites have been raising the funds and dedicating the community resources necessary for the production, security, housing and other logistical arrangements that the debates require. The debate schedule, as announced by CPD on January 6, 2000, will be:
  - o 1st Presidential Debate, 9:00 pm EDT, Tuesday, October 3 John F. Kennedy Library & University of Massachusetts-Boston Boston, Massachusetts
  - o Vice-Presidential Debate, 9:00 pm EDT, Thursday, October 5 Centre College, Danville, Kentucky
  - o 2nd Presidential Debate, 9:00 pm EDT, Wednesday, October 11 Wake Forest University, Winston-Salem, North Carolina
  - o 3d Presidential Debate, 9:00 pm EDT, Tuesday, October 17 Washington University in St. Louis, MO

### ADDITIONAL TERMS OF INVITATION



In the meantime, the CPD's plans for 2000 are designed to present to the public the leading candidates for the offices of president and vice president in debate formats that provide maximum educational value and audience interest. The CPD's plans for 2000 are based on extensive research of citizen response to the 1996 debates.

Accordingly, CPD announces today the following particulars as additional terms of invitation to the 2000 debates.

- Each debate will be 90 minutes in length
- Each debate will include a fair balance of international and domestic topics
- Each debate will have a single moderator selected for his/her understanding of the topics and his/her experience as a questioner on live television
- Each debate will encourage direct exchanges between the candidates
- At least one presidential debate will be structured in a town meeting format in which candidates respond to questions from citizens not aligned with any campaign
- At least one debate will be structured with candidates seated at a table with the moderator
- At least one debate will be structured with candidates standing behind podiums
- To ensure the widest possible audience, the CPD will take full advantage of the Internet's potential for citizen engagement and education

CONTACT: John Scardino (202) 737 7733

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# COMMISSION ON PRESIDENTIAL DEBATES

News: CPD Stands Behind Original Debate Proposal

September 3, 2000 - The nonpartisan Commission on Presidential Debates (CPD) today released the following statement:

The CPD is committed to sponsor and produce debates that educate the largest number of Americans possible. We believe the CPD proposal as announced on January 5, 2000 continues to be the one in the best interest of the American public for several reasons:

- All major television networks have carried the CPD's debates in the past and intend to do so
  this fall. The CPD's schedule was specifically developed to minimize conflict with other
  scheduled television programs which would have reduced the size of the national audience
  (such as the Olympics, baseball playoffs and World Series), and to minimize competition
  between networks.
- The Federal Election Commission (FEC) requires that debate sponsors have pre-published, objective criteria in order to determine who will be invited to the debates. The CPD announced its 2000 candidate selection criteria on January 5 and will apply them later this month.
- The CPD has recommended use of a single moderator for all its debates, a format that allows for the maximum information about the candidates and their positions to be provided to the American public; we have recommended that one debate feature citizen questioners in a town meeting, one debate be held with the candidates seated at a table with the moderator, and that all debates include direct exchange between the candidates.
- The CPD's four sites the University of Massachusetts in Boston; Centre College, Danville, KY; Wake Forest University, Winston-Salem, NC; and Washington University in St. Louis, MO have been working on debate preparations since late 1999. The CPD has always held its debates in communities, particularly college campuses, in order to involve thousands of young people in these historic events.

We invite representatives of the Bush and Gore campaigns to a meeting early next week to reach a final agreement on this fall's debates.

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# COMMISSION ON PRESIDENTIAL DEBATES

News: Campaigns Agree to Debate Schedule

September 14, 2000 - Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., co-chairmen of the nonpartisan Commission on Presidential Debates (CPD), today said that the Gore and Bush campaigns have agreed to the following debate schedule as announced by the CPD on January 5, 2000:

First presidential debate October 3, University of Massachusetts, Boston, MA Vice presidential debate October 5, Centre College, Danville, KY Second presidential debate October 11, Wake Forest University, Winston Salem, NC Third presidential debate October 17, Washington University in St. Louis, MO

All debates will be ninety minutes long.

"We are very pleased that the campaigns have agreed to these plans," the co-chairmen said. "The American public can look forward to four substantive discussions of the issues central to this general election."

The debate invitation to these campaigns is subject to the application of the CPD's Nonpartisan Candidate Selection Criteria to be applied later this month.

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# BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

# **DECLARATION OF ALAN K. SIMPSON**

I, Alan K. Simpson, give this declaration based on personal knowledge as follows:

- 1. I am a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I serve on the Board because I have always supported the CPD's efforts to ensure that the public has the remarkable opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.
- 2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following passage:

CPD director Alan Simpson said, "You have a lot of thoughtful Democrats and Republicans on the commission that are interested in the American people finding out more about the two major candidates -- not about independent candidates, who mess things up." When asked if third-party or independent candidates should be included in the presidential debates, Simpson said, "No . . . I think it's obvious that independent candidates mess things up." (Ellipses indicating omitted words in original)

3. Mr. Farah cites an interview he conducted with me on March 18, 2002 as his source for these quotes. I have no recollection of this interview from two years ago -- I do many per month -- but it is entirely possible that it took place. I am most assuredly certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

Although the "quote" itself indicates that some words have been omitted by Mr. Farah, I certainly have no present way of knowing what words have been omitted.

4. I do know that the statements Mr. Farah attributes to me in the Complaint do not fairly or fully reflect my views with respect to the participation of nonmajor party candidates in debates sponsored by the CPD. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD thoughtfully adopted nonpartisan candidate selection criteria solely designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

day of March, 2004.

ALANK SIMPSON

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# BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
· ·	)	MUR 5414
The Commission on Presidential Debates	')	

### **DECLARATION OF NEWTON MINOW**

- I, Newton Minow, give this declaration based on personal knowledge as follows:
- I am presently a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I have served as a Director since 1993.
- 2. I am aware of the Complaint against the CPD, filed with the Federal Election
  Commission by Mr. George Farah, on behalf of the organization named Open Debates. I
  understand that the Complaint includes the following quote from an Op-Ed article I co-authored
  in 1984 and which appeared in the New York Times:

Because debates are political events, responsibility for them should rest with the political system—with the Democratic and Republican Parties . . . Although entrusting such debates to the major parties is likely to exclude independent and minor party candidates, this approach is consistent with the two-party system. Moreover, if the Democratic and Republican nominees agreed, other candidates could be included.

- 3. Mr. Farah introduces this quote with the following sentence: "The CPD directors believe in a two-party system, and most are contemptuous of third-party and independent candidates." Open Debates Complaint at 6.
- 4. To my knowledge I have never spoken with Mr. Farah and he most assuredly has not accurately represented my views.
- 5. Contrary to the paradigm addressed in my 1984 article, the CPD, as it has actually operated, is an independent non-profit organization, which receives no funding from any political

party. No official from the major parties holds any office or position whatsoever with the CPD, and the CPD is not in any sense, directly or indirectly, controlled by the major parties.

- 6. In the eleven years that I have been on the CPD Board -- and therefore have direct knowledge -- the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions have been made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware of any decision by the CPD concerning candidate eligibility to participate in the debates that was controlled or directed by the major parties or their nominees, as is alleged in the Open Debates complaint.
- 7. I serve on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.
- 8. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD, after careful deliberation and study, has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22000 day of March, 2004.

NEWTON MINOW

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# BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

### **DECLARATION OF BARBARA VUCANOVICH**

- I, Barbara Vucanovich, give this declaration based on personal knowledge as follows:
- 1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from February 1987 to April 1997. I currently have no affiliation with the CPD.
- 2. I support the CPD's efforts to ensure that the public has an opportunity, during the final weeks of the general election campaign, to view debates among those individuals, regardless of their party affiliation, who have emerged as the leading candidates for the Offices of President and Vice President of the United States.
- 2. I am aware of the complaint against the CPD filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. The complaint includes the following sentence: "Barbara Vucanovich, a former CPD Director, praised Executive Director Janet Brown, for being 'extremely careful to be bi-partisan." Mr. Farah cites an interview he conducted with me on July 23, 2001 as the source for this quote. The complaint relies on this partial quote to support the contention that the CPD is not "nonpartisan" but rather is "bipartisan."

- 3. I remember being interviewed by Mr. Farah. He specifically represented to me that he was a reporter. He did not mention that the purpose of the interview was to press a claim against the CPD.
- 4. The quote attributed to me, as it is used in the complaint, does not fully or fairly reflect my views of the CPD or the manner in which it has operated. I used the word "bi-partisan," as many do, to mean not favoring any one party over another. It was not intended in the sense Mr. Fárah has used it in the complaint.
- 5. It is my firm belief that the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

> Barbara & Tucanquich BARBARA VUCANOVICH

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### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

### **DECLARATION OF JOHN LEWIS**

- I, John Lewis, give this declaration based on personal knowledge as follows:
- 1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") for the period from 1994 to 1998. I served on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.
- 2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following quote attributed to me:

There's no question that having the two major parties in absolute control of the presidential debate process, and there's no question that they do, strengthens the two-party system. These are the most important events of an election, and if no other candidates are getting in the debates, the American people are just not going to hear about them, which means the two parties basically have a monopoly.

3. Mr. Farah cites an interview he conducted with me on September 17, 2002 as his source for this quote. I have no recollection of this interview from two years ago, but it is entirely possible that it took place. I am certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

- 4. Mr. Farah relies on the above quote attributed to me to support his thesis that the major parties control the CPD and that the CPD is "bipartisan" rather than "nonpartisan." Mr. Farah has not represented my views fully or fairly. While, as noted, I do not remember the interview with Mr. Farah, it is interesting that the quote he attributes to me does not say that the major parties control the CPD.
- 5. I believe that the CPD's debates should include the leading candidates for president ard vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.
- 6. During my tenure on the Board of the CPD, candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aw are that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed his 1 day of March, 2004.

OHN LEWIS

### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5414
The Commission on Presidential Debates	)	

### **DECLARATION OF DAVID NORCROSS**

- I, David Norcross, give this declaration based on personal knowledge as follows:
- 1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from 1987 to 1993. I do not presently serve on the Board or hold any other position with the CPD. I have not held official position with the CPD for over a decade and have no direct knowledge concerning its operations since I left the Board.
- 2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes and attributes to me the following quote regarding the CPD: "It's really not nonpartisan. It's bipartisan."
- 3. Mr. Farah cites an interview he conducted with me on March 26, 2001 as his source for this quote. I recall doing the interview. Mr. Farah did not tell me that the purpose of the interview was to press a claim against the CPD.
- 4. I am aware that Mr. Farah has used the comments he attributes to me as part of his effort to advance the claim that the CPD supports the major party nominees and opposes the candidacies of nonmajor party candidates and, therefore, is bipartisan rather than nonpartisan.

  Mr. Farah has not fully or fairly represented my views.

- 5. In the years that I served on the CPD Board -- and therefore have direct knowledge -the Board made considerable efforts to deal fairly with third-party candidates and adopted and applied
  nonpartisan criteria to determine candidate eligibility to participate in debates hosted by the CPD.

  During my tenure on the Board of the CPD, all candidate selection decisions were made based on a
  good faith application of the CPD's published nonpartisan candidate selection criteria. I am not aware
  of any decision by the CPD concerning candidate eligibility to participate in the debates that was
  controlled or directed by the major parties or their nominees, as is alleged in the Open Debates
  complaint.
- 6. I served on the CPD Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.
- 7. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. During the time I served on the Board, the CPD, after careful deliberation and study, adopted nonpartisan candidate selection criteria designed to identify those candidates who had achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. The CPD's criteria in place while I was on the Board represented a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, were invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_ day of March, 2004.

DAVID NORCROSS

### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
The Commission on Presidential Debates	)	MUR 4987

### **DECLARATION OF DOROTHY S. RIDINGS**

I, Dorothy S. Ridings, give this declaration based on personal knowledge.

- 1. Since April 1997, I have been a member of the Board of Directors of the non-profit, nonpartisan Commission on Presidential Debates (the "CPD"), which is a voluntary, unpaid position. Since 1996, I have been the President and CEO of the Council on Foundations. In addition, I currently am a Director of the Foundation Center and a Trustee of the Louisville Presbyterian Theological Seminary. I have never held a position with any political party, and my service on the CPD's Board is not tied to any political party.
- 2. Prior to joining the Council on Foundations, I was the Publisher and.

  President of The Bradenton Herald from 1988-1996 and the General Executive of Knight-Ridder, Inc. from 1986-1988. I also have worked as an editor, a writer, and an adjunct professor, and as a technical assistant on a public housing project. I obtained my bachelor's degree from Northwestern University and my master's degree from the University of North Carolina.
- 3. From 1982-1986, I served as the President of the League of Women Voters of the United States (the "League"), and prior to that time I had been associated with that organization in other capacities since 1976. In that regard, I am familiar with and was involved in the League's sponsorship of general election presidential debates in 1976, 1980

and 1984. The League's goal in sponsoring general election debates, like that of the CPD, was to provide the electorate with the educational opportunity of seeing debates among the leading contenders for the Office of the President.

- 4. The League sponsored two presidential general election debates in 1980, using criteria for invitations that are very similar to the CPD's 2000 criteria: constitutional eligibility, ballot access, and demonstrated significant voter interest and support. ("The 1980 Presidential Debates: Behind the Scenes," a League of Women Voters Education Fund publication, is attached at Tab A.) A candidate could satisfy the League's demonstrated voter interest requirement either by obtaining the nomination of a major party or by achieving a 15% level of national support (or a level of support at least equal to that of a major party nominee) in national public opinion polls.
- 5. Based on the application of the foregoing criteria, independent candidate

  John Anderson was invited to participate in the first presidential debate sponsored by the

  League in 1980. However, President Carter declined to participate in that debate because of
  the presence of the independent candidate. As a result, Mr. Anderson and Ronald Reagan,
  then the Republican nominee, participated in a two-candidate debate without President

  Carter.
- 6. After the nationally televised presidential debate in which he participated, Mr. Anderson's support in the polls dropped, taking his support level below 15% in four of five polls reviewed by the League after its first debate. Consequently, when the League sponsored a second debate in 1980, only candidates Carter and Reagan were invited, and the debate went forward between those two candidates.

7. As the events of 1980 well demonstrate, an organization such as CPD that seeks to sponsor general election debates among the leading candidates for the Office of the President faces a difficult challenge. No candidate is obligated to debate, and there is a significant risk that a leading candidate would not agree to share the debate stage with a candidate who enjoys only modest levels of national public support. Thus, the debate sponsor's legitimate goal in formulating its candidate selection criteria is to be sufficiently inclusive so that any candidate properly considered a leading candidate is invited to debate, but not so inclusive that one or more of the candidates in whom the public has demonstrated the greatest level of support refuses to debate. Given that the purpose of the CPD's debates is to afford the voting public an opportunity to sharpen their views, in a debate format, of the principal rivals for the Presidency, the absence of one of the leading candidates would dramatically undercut the educational purpose of its debates.

8. CPD adopted its candidate selection criteria for the debates it hopes to sponsor in 2000 with the foregoing considerations in mind, as well as with the goal of adopting criteria that would be clear and readily understood by the public. In my capacity as a member of the CPD's Board, I was involved in the discussions and the decision-making process that led to the Board's unanimous decision to adopt the document entitled Commission on Presidential Debates' Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation (the "2000 Criteria"), a copy of which is attached here at Tab B. The 2000 Criteria were adopted after extensive consideration of how best to achieve the CPD's educational goals. Contrary to what I understand the complainants have claimed, the CPD's 2000 Criteria were not adopted with any partisan or bipartisan purpose. They were not adopted with the intent to keep any party or candidate from participating in

the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted to further the legitimate voter education purposes for which CPD sponsors debates.

- 9. In connection with the debates it sponsored in 1988, 1992 and 1996, CPD employed an approach to candidate selection that involved the consideration of multiple factors in an effort to identify those candidates with a "realistic chance of being elected." The earlier criteria, like the current criteria, were intended to identify the leading candidates for the Presidency. It is my understanding that the Federal Election Commission rejected a challenge to the CPD's earlier criteria brought in 1996 and found that the CPD's criteria were "objective" and otherwise consistent with the FEC's regulatory requirements.

  Although it would have been easier in some respects simply to employ again in 2000 the criteria that had already withstood legal challenge in 1996, the CPD recognized from the experience in 1996 that its contribution to the electoral process likely would be enhanced by adopting criteria that were clearer and simpler, and the application of which would be very straightforward.
- 10. One of the criteria set forth in the CPD's 2000 Criteria is the requirement that a candidate have a level of support of fifteen percent of the electorate, as described more fully in the Criteria. The CPD's selection of fifteen percent as the requisite level of support was preceded by careful study and reflects a number of considerations. It was CPD's considered judgment that the fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.

- unattainable level of support for an independent or minor party candidate to achieve without participation in the debates. CPD's review of the historical data is to the contrary. As noted, John Anderson achieved this level of support prior to the first debate in 1980 and, therefore, was invited by the League to debate. Other independent and third-party candidacies from the modern era demonstrate the point as well. George Wallace achieved significant voter support in 1968, and Ross Perot enjoyed a high level of popular support in 1992, particularly before he withdrew from the race in July of 1992. (Mr. Perot subsequently re-entered the race shortly before the 1992 debates.)
- public funding of general election campaigns as the criterion for debate participation rather than another measure of public support. However, that criterion is itself both potentially overinclusive and underinclusive. Eligibility for general election funding is determined based on performance in the prior Presidential general election. We realized that such an approach would be underinclusive to the extent that it would automatically preclude participation by a prominent newcomer (such as Ross Perot in 1992), but also would be overinclusive to the extent it would mandate an invitation to the nominee of a party that performed well in a prior election, but who did not enjoy significant national public support in the current election. In addition, while the Congress determined that five percent was a sufficient level of support for purposes of determining eligibility for federal funding as a "minor" party (at a level that is substantially lower than that received by the "major" parties), as noted, a debate host hoping to present the public with a debate among the

leading candidates (none of whom are required to debate) must necessarily take into account a different set of considerations.

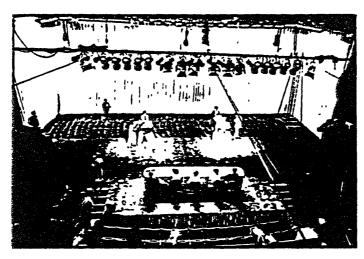
I declare under penalty of perjury that the foregoing is true and correct. Executed on April  $\frac{24}{7}$  2000.

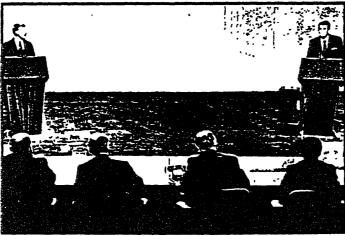
Dorothy S. Ridings

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# THE 1980 PRESIDENTIAL DEBATES: BEHIND THE SCENES







League of Women Voters Education Fund

### Corporate Contributors to the League of Women Voters Education Fund for 1980 Presidential Debates

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The LWVEF gratefully acknowledges the many cash and in-kind contributions by corporations in Baltimore and Cleveland to defray site expenses.

The LWVEF also acknowledges, with great appreciation, the many cash and in-kind contributions of League members and citizens throughout the country to defray the costs of the Forums and Debates.

### The 1980 Presidential Debates: Behind the Scenes

On October 28, 1980, 120 million Americans, the largest television audience in our nation's history, watched Jimmy Carter and Ronald Reagan debate face-to-face. This event climaxed a long and grueling presidential campaign. Interest in it — on the part of both press and public — intensified as the long-playing drama unfolded and election day approached. Would the major presidential candidates actually face one another in what had been billed as the superbowl of the 1980 election?

The League of Women Voters, which sponsored this and the preceding Debate between Ronald Reagan and John Anderson, as well as three Presidential Forums during the primary season, undertook many roles during that critical time. It was by turns negotiator, mediator, fundraiser and producer, as it tried to overcome the obstacles and resolve the conflicting aims of all those with a stake in the debates. The public clearly wanted to see and hear presidential candidates at the same time, in the same place and under the same conditions. The candidates and their strategists understandably were seeking the most advantageous conditions and were anxious to control the terms of debates. If they didn't get what they wanted at any given time - conditions that changed as the political fortunes of the campaign shifted - they could walk away. The League's difficult job was to resolve those often conflicting interests and make the Presidential Debates a reality.

Against considerable odds, the League was successful in making two Presidential Debates happen in 1980 — Debates that set several benchmarks that promise to have a lasting effect on the way voters choose their presidents. It was the first time a debate sponsor grappled with the participation of nonmajor party candidates, an issue that is likely to persist in future debate presentations. What is perhaps more important, the League's successive sponsorship of 1976 and 1980 Presi-

dential Forums and Debates puts the organization well on the way toward achieving one of its major voters service goals — to establish such debates as an integral part of every presidential election.

# Laying the Groundwork for 1980

The League's determination to sponsor Presidential Forums and Debates in 1976 and 1980 was deeply rooted in its own history and sense of mission. The League has been committed to providing a variety of services to voters since its founding in 1920. State and local Leagues throughout the country have fo years offered nonpartisan arenas for candidates to discuss campaign issues so that voters could make side-by-side comparisons of the candidates and their views. These candidate events have dealt with every elective office from local school boards to the United States Senate.

When the League set out in 1976 to bring presidential candidates together in a series of primary forums and general election debates, its sponsorship was thus a natural, though major, extension of the long tradition of these state and local League-sponsored candidate events. And the timing was right. There had not been presidential debates since 1960, when John Kennedy and Richard Nixon faced one another in network-sponsored debates. Sixteen years later, in 1976, the public wanted presidential debates (a Gallup poll showed that seven out of 10 people were in favor of debates), and very significantly, the candidates wanted them, too. With this tide flowing in its favor, the League was successful in its first Presidential Debates project. By the end of the 1976 election season, the League had presented four Forums at key points during the primaries and three Debates between the Republicans' candidate, Gerald Ford, and the

Democrats' candidate, Jimmy Carter, as well as one between their running mates, Robert Dole and Walter Mondale.

As the next presidential campaign approached, the League's national board weighed the merits of making so major an effort once again. The League knew from experience that there was a huge "consumer demand" for more thoughtful treatment of the issues in the campaign and for getting the candidates to discuss their positions on the issues in a neutral setting. The board concluded that debates could serve as essential a role in 1980 as they had in 1976, by providing a necessary alternative to the 30- and 60-second spots and the paid political programs.

Once again, the League mobilized state and local Leagues throughout the country, undertook a massive fundraising drive, hired staff to

direct the project, began visiting potent debate sites and committed the whole reaction to ensure that a series of Preside reactions and Debates would be a part o 1980 presidential election.

As it turned out, a series of four Presi Forums throughout the primary seasor scheduled, only three of which took pla Though the original schedule provided events at each site, one for Democratic one for Republican aspirants, political redictated that in 1980 only Republican cadates met face-to-face to address key capaign issues. The opposite was true in when forums took place only between I emerate candidates. (See Appendix A for decrease on 1980 Forums).

Near the end of the 1980 primaries, F Reagan and Jimmy Carter, who each se

# The League of Women Voters Education Fund - Sponsor of the Debates

The League of Women Voters Education Fund (LWVEF) was established in 1957 as a research and citizen education organization (with 501(c)(3)tax status) by the League of Women Voters of the United States (LWVUS), a membership and action organization (with 501(c)(4) tax status) dedicated to promoting political responsibility through informed and active participation of citizens in government.\* The LWVEF provides local and state Leagues as well as the general public with research, publications and other educational services, both on current issues and on citizen participation techniques. The network of local Leagues has a multiplier effect in bringing the Education Fund's services to the wider public. Through workshops, conferences and the distribution of publications, Leagues disseminate the LWVEF's research and 'how-to' citizen aids.

On the national level, the Education Fund's historic 1976 Presidential Forums and Del ates paralleled the service to voters that local and state Leagues provide at election time with their candidate meetings. The Forums were the first series of their kind presented before the primaries, and the Debates marked the first time in more than 16 years that presidentia candidates met face-to-face.

<sup>\*</sup>The two organizations, LWVUS and LWVEF, are explicitly identified in the text only where the distinctions are important to the particular points being discussed. Otherwise, the term \*League s used throughout to refer to the LWVEF.

Carter's promise came on May 5, 1980 when he addressed the national convention of the League of Women Voters of the United States in Washington, DC. He was asked, "Mr. President... we'd like to know if you'd give your promise to us today to participate in the League-sponsored Presidential Debates this fall if you are the nominee of the Democratic Party." Mr. Carter's reply: "Yes! Yes! I will be glad to participate this fall if I am the nominee. It would be a great pleasure to be the nominee and to debate..."

With public commitments in hand, the League turned toward several other issues related to the Debates, such as eligibility requirements for candidate participation, format, number of debates, and selection of debate sites. As a means of soliciting preliminary advice on these and other topics, the League's board established a 28-member Public Advisory Committee on Presidential Debates. The committee was chaired by Carla Hills, former Secretary of Housing and Urban Development with the Ford Administration, and Newton Minow, former chairman of the Federal Communications Commission under President Kennedy.

In July, the League's board announced its proposed schedule for the series: three Presidential Debates and one Vice-Presidential Debate, starting in September. At the same time, they reviewed some 20 potential debate sites and identified Baltimore, Maryland; Cleveland,

Ohio; Louisville, Kentucky; and Portland, Oregon, as the proposed sites for these Debates. Geographical diversity was a factor in selecting the sites, as was the availability of suitable facilities.

What was left to determine were the criteria by which candidates would be invited to debate — a process that was to become a cause célèbre.

### Criteria: The Debate About Who Should Debate

The inclusion of independent and third-party candidates in presidential debates was completely uncharted territory. There was no history to look back on. The Kennedy-Nixon debates in 1960 and the Ford-Carter debates in 1976 had set a precedent for debates between major-party candidates, but there was no precedent for how to deal with the fact that from time-to-time an independent or minor-party candidate emerges as a significant force in a presidential campaign. Since 1980 seemed to be such a year, it was imperative that the League set objective criteria early by which to determine which candidates merited treatment as "significant."

Literally dozens of candidates were interested in being included. Yet the goal of having candidates deal with the issues in some depth would be defeated if the cast of characters became too large. The League knew that it would also be much harder to get the majorparty candidates to agree to debate if they ha to share the platform with candidates they considered less significant. Therefore, the League decided not only to establish criteria for the selection of debate participants, but also to announce these criteria well before applying them, so that both the public and th candidates would know all the rules.

for the League, no issue took more attention or involved more discussion than the development of these criteria. The League knew that such criteria would not only play a critical part in the 1980 debates planning, but also that these criteria and the process by which they were determined would be carefully scrutinized. Moreover, the Federal Election Commission (FEC), the agency set up to regulate federal elections, would view the criteria as a measure of the League's nonpartisanship. (The FEC permits a debate sponsor to exercise its discretion as to whom to invite as long as debates are nonpartisan and include at least two candidates. See box, p. 8, for a detailed description.)

The criteria for selecting candidates to appear were based on the FEC's requirements and the League's own long-standing and strict standards for offering voters reliable, nonpartisan pre-election information about candidates and their positions on issues. They had to be nonpartisan; they had to be capable of objective application, so that they would be as free as possible from varying interpretations; and they had to be easy to understand.



LWV President Ruth J. Hinerfeld meets with James Baker, chairman of the Reagan for President committee (L) and Carter Campaign Chairman Robert Strauss (R) to work out details for a Carter-Reagan debate.

On August 9, the League's board adopte three criteria by which invitations would be extended. Any candidate invited to particip. would have to meet all three:

- 1. Constitutional eligibility Only those condidates who met the requirements of the Constitution of the United States were considered. Article II, Section I required the President to be a "natural born citizen," at least 35 years of age, and a resident within the United States for at least 14 years.
- 2. Ballot access A presidential candidate had to be on the ballot in enough statehave a mathematical possibility of winn —
  the election, namely, a majority of vote(270) in the Electoral College.
- 3. Demonstrated significant voter interest and support A candidate could demo strate significant voter interest and support in one of two ways: nomination by major party; or, for minor-party and independent candidates, nationwide public opinion polls would be considered as an indicator of voter interest and support. Those candidates who received a level of voter support in the polls of 15 percent or a level of support at least equal to that of a major-party candidate would be invited to participate in the Debates.

The criteria were announced at a press conference in New York City on August 10. The first and second criteria occasioned little comment, but the 15-percent level of support in nationwide public opinion polls created considerable controversy, with the press, tipublic and the candidates all getting into a mini-debate about the use of polls and the appropriate threshold for deciding who should be invited to debate.

Some, including pollsters, questioned the use of polling data to measure significant voter support, since polls are subject to

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Others criticized either the use of a specific figure or the choice of 15 percent as that figure. Threshold levels ranging between 15 and 25 percent had been discussed by the Advisory Committee. The League's board, after carefully weighing the options, decided that a specific figure, though admittedly arbitrary, would provide the most objective basis for a decision. In settling on the 15-percent figure, the board took into account a number of factors: the records of public opinion polls in previous presidential elections and their relationship to election outcomes; the substantial obstacles faced by nonmajor party candidates; and variations among public opinion polling techniques and the precision of their results. The board concluded that any nonmajor party candidate who, despite the odds such candidates face, received even a 15-percent level of support in the polls should be regarded as a significant force in

The League's board also decided that it was essential to apply the criteria to nonmajor party candidates as close in time to the first Debate as was realistically possible. To allow a sufficient amount of poll data to be gathered between the last major-party convention and the scheduled first Debate, which was targeted for the third week in September, it was clear that the League could not effectively apply the criteria until the second week in September.

At the same August 10 press conference, it was announced that the League would extend

formal invitations to the major-party candidates later that week at the conclusion of the Democratic National Convention. (The Repulicans had met in July.)

Realizing that decisions made in early September, while appropriate at that time, might not remain so, the League's board had also determined that it was essential, in order to be faithful to the purposes of the Debates, to reserve "the right to reassess participation conomajor party candidates in the event of significant changes in circumstances during the debate period." League President Ruth John Hinerfeld gave clear notice at the August 10 press conference that the board would review such candidates' standings before subsequence debates in light of the established criteria, then extend or withhold invitations accordingly.

The establishment of the criteria cleared toway for the League to invite candidates to debate.

### The Politics of Debating

By the summer of 1980, as the League was ready to extend invitations to the major-party candidates, the public commitments those candidates had made in the spring to participate in League-sponsored Debates had begun to waver. The political climate had changed. John Anderson's independent candidacy had gained momentum and had become a force to be reckoned with by both the candidates and the League.

On August 19, a week after the Democrinominated Jimmy Carter as their standard bearer in 1980 (Ronald Reagan had alread been nominated by the Republican Party), League formally invited Jimmy Carter and Ronald Reagan to participate in a series of three Presidential Debates — the final date

By late August, neither candidate had said yes to the League's invitation. Starting on August 26, the League began to meet with their representatives in joint session to discuss the whole debate package, including the number of debates, dates, sites and formats, and to secure an agreement from both candidates to debate. Carter strategists wanted earlier debates, Reagan strategists wanted later debates: Carter representatives wanted more debates, Reagan representatives wanted fewer debates. All these specifics were put on the table for discussion - none of the differences seemed insurmountable. Yet at the end of this meeting neither side made a commitment to debate - each was waiting to see whether John Anderson would be included.

On September 9, after reviewing data from five different polling organizations, in consultation with three polling experts (not involved in the polls being used), the League announced that John Anderson met its criteria, and he was immediately invited to participate in a three-way Debate in Baltimore on September 21.\* He accepted immediately, as did Ronald Reagan. Jimmy Carter announced that he would participate in a three-way Debate only after a two-way Debate with Ronald Reagan. Having established its criteria and having invited John Anderson, the League would not agree to Carter's proposal.

Following the September 9 decision, the

\*The five polling organizations whose data the League examined were: Louis Harris Associates, the Los Angeles Times, the Roper Organization, NBC/Associated Press and the Callup Poll. The three polling experts consulted by the League were: Mervin Field, Chairman of the Board of the Field Research Corporation; Lester R. Frankel, Executive Vice-President of Audits and Surveys, Inc.; and Dr. Herbert Abelson, Chairman of the Board of Response Analysis Corporation.

League set up meetings with the candidate representatives to reach agreement on the details of the first Debate, scheduled for September 21. All aspects of this first Debate in Baltimore were agreed upon by Reagan 17. Anderson representatives. Carter had still agreed to debate.

The invitation to debate remained open Jimmy Carter, and the League indicated that third podium would be held in readiness for him at the Baltimore Debate in the hope that he would be present. For several days, the possibility of a third podium or 'empty chawas the source of considerable speculation as the press and a favorite topic for political cartoonists. However, when it became app. ent that Jimmy Carter would not change hi mind about participating in a three-way De bate, the League announced that there wo . . be no "empty chair" in Baltimore. The first 1980 League-sponsored Debate took place September 21 as scheduled, but only Reag .and Anderson took part. (See Appendix B f details on 1980 Debates.)

In sponsoring the Baltimore Debate, the League had held firm to its plan to invite al. significant candidates to debate and had not agreed to Carter's condition that he would appear in a three-way Debate only after debating Ronald Reagan one-on-one. However, the League also recognized that the Baltimore Debate had failed to meet its goal of giving voters an opportunity to see and hear all of the significant presidential candidates at the same time, in the same place under the same conditions. Unfortunately, -prospects for a three-way Debate did not improve after September 21. With Carter's terms unchanged and with Anderson still showing enough support in the polls to me the League's criteria for participation, it appeared there might be no further debates.

Yet it was becoming increasingly clear the the public wanted more debates. The Leag &

At the same time the League made this offer, it also invited all three vice-presidential candidates to participate in a Debate in Louisville, Kentucky. Democrat Walter Mondale said yes, independent Patrick Lucey said yes, but Republican George Bush said no. When Bush said no, Mondale then declined the League invitation, and the vice-presidential debate was cancelled.

The presidential series also appeared doomed. The League withdrew its proposal when no agreement could be reached, and there seemed very little hope of working out any future agreement. In the next few weeks, however, several developments helped to break the stalemate. Voter interest in a debate between the major-party candidates continued to build, as evidenced by major national public opinion polls released during that period. Editorials and columns appeared in some of the nation's leading newspapers and magazines calling on Jimmy Carter and Ronald Reagan to debate one-on-one.

During this same period, the polls also showed that John Anderson's support was eroding. In mid-October, in keeping with the policy established when the criteria were announced, the League's board reviewed his eligibility for participation. The board examined the results of five national polls taken between September 27 and October 16, conducted by the same polling organizations whose results the League had examined in



LWVEF officials brief the journalists who formed the panel of questioners for the debate in Baltimore between Ronald Reagan and John Anderson.

making its early September decision. Four of these five polls showed John Anderson's level of support below 15 percent, clearly below the levels of support he received in those same polls in early September. In consultation with the same three polling experts with whom it had conferred earlier, the League's board determined that John Anderson no longer met the League's criteria. The League then — on October 17 — invited Jimmy Carter and Ronald Reagan to debate in Cleveland, Ohio on October 28. Both candidates accepted the invitation.

The scenario was very different from that first envisioned by the League. As originally planned, a debate so late in the campaign would have been the last in a series of three, a series that would have offered the possibility of varying the subject matter and format. Now, the two main contenders would have only one chance to face one another. October 28 had become transformed from one in a series of opportunities for candidates and voters to deal thoughtfully with the issues into a winner-take-all event.

With such high stakes, planning for the actual Debate was a delicate process. Candidates' representatives were concerned about audience size, color of backdrop, the place-

ment of still photographs in the hall, etc. But the format was of greatest concern.

For the very reason that the Cleveland Debate would now be the only one between the two major-party candidates, the League urged a format that would produce the freest possible exchange on the broadest possible range of campaign issues — namely, using only a moderator to direct the flow of exchange between the two candidates. It was a format that had worked exceptionally well in the second of the 1980 League-sponsored Forums in Chicago.

For exactly the same reason—that it was to be the only Debate between Carter and Reagan—this format was not acceptable to either candidate. With the stakes so high, neither was willing to take his chances on such a free-flowing format. Both Insisted on a more predictable exchange, using a moderator and panelists as in the 1960 and 1976 debates.

The League, like many viewers and press critics, was far from satisfied with either this format or that of the September Debate. The fact was, however, that the candidates' representatives insisted on the "modified press conference" format of both Debates, negotiated to the minutest detail. It was that or nothing.

Closely allied to the format issue was that of panel selection. The League had developed a roster of 100 journalists from which the moderators and panelists for both Debates were finally drawn. League staff conducted an exhaustive search through consultation with professional media associations, producers of major news analysis shows and editors and news directors representing minority media. Particular attention was given to the journalists' areas of expertise and their reputation for fair and objective reporting of the issues.

The final selections were made by the League in consultation with the co-chairs of

### The Lea

When the League announced in No emb 1979 its intention to sponsor a series ... Presidential Forums and Debates, it the midst of a prolonged struggle o z ... ing sources and the structure of fed :-: candidate debates with the Federal 1 em. Commission (FEC), the agency set Lote regulate federal elections under the :37-Federal Election Campaign Act (FEC 1. Or the provisions of that act made it un awa any corporation or union "to make a conttion or expenditure in connection win ar election to any political office . . . " ir while the LWVEF was planning the 15 --Presidential Forums, the FEC inform vised the League that corporate and .-... funds to finance the Forums would  $r_i :: \mathbb{R}^2$ prohibited as long as such contributions not have the "effect of supporting or access particular parties or candidates." But 🙃 🛫 after the LWVEF had already conducto : -forums series partly financed by corporate and union contributions, the FEC issued a policy statement barring 501(c)(3) organizations such as the LWVEF from accepting corporate or union-donations to defray the costs of such events as debates. The FEC admitted that corporate and union donatior to the LWVEF were not political contribution: or expenditures under FECA's definition of those terms, but the agency said tha ·--LWVEF's expenses were nevertheless : < bursements 'in connection with' an  $\epsilon$  .... and therefore could not come from c --- 1 or union sources.

The 1976 decision, which was mad advance of the League-sponsored For The Debates, had a devastating effect on Logical

### and the FEC: Financing the Debates

orans to fund these Presidential Debates.
Forced to rely solely on contributions from
Milyduals and unincorporated organizations,
The League was unable to raise enough
Money to cover the full cost of the 1976
Debates.

Ton February 11, 1977, convinced that Presidential Debates were an important educational service to the public, and fearing the TC decison would have an impact on state and local League-sponsored candidate events, the League of Women Voters of the United Sales, the League of Women Voters Education Fund and the League of Women Voters of the League of Women Voters o

As a result of the lawsuit and FEC public hearings on the importance of debates to an informed electorate, the FEC cancelled its affect decision and agreed to begin the process of writing regulations that would clarify issues of debate funding and sponsortable. The League did not believe that any regulations in this area were necessary but saw them as a way to remove the chilling effect of the FEC's prior action on potential corporate donors.

The process of setting those regulations took almost three years. In order to guarantee nonpartisanship, the FEC formulated regulations limiting sponsors of debates to those who might reasonably be expected to act in a nonpartisan manner and by establishing strict rules as to who might be invited to participate in the debate.

The agency's first attempt at regulation was vetoed by the Senate in September 1979.

Thus the FEC began the rulemaking process again and developed a regulation that took effect on April 1, 1980, barely in time for the League to undertake the massive fundraising necessary to sponsor the 1980 Presidential Debates. This regulation broadened sponsorship of debates to 501 (c)(3) and 501 (c)(4) organizations that did not endorse, support or oppose political candidates or parties. It also allowed bona fide broadcasters and the print media to spend corporate money to stage debates. It left to the discretion of the sponsor the method by which candidates were chosen to participate. The FEC stated that debates are required to be nonpartisan and left it up to the sponsor as to how that was to be achieved.

As soon as the new regulation went into effect, the League began to raise money from corporations for the 1980 Presidential Debates. A breakthrough in securing the necessary amount of funding came when six major corporations each contributed \$50,000. (See inside front cover for list of corporate contributors.) (The largest single contribution in the history of the LWVEF's Debates project was a gift of \$250,000 from the Charles Benton Foundation in 1976, made before the 1976 FEC ruling.)

In all, the League raised and spent nearly \$700,000 for the 1980 Presidential Forums and Debates, which could not have taken place without the generous contributions of the corporations and individuals involved. This \$700,000 was greatly augmented by the value of volunteer hours — particularly those of League members in Baltimore, Louisville, Portland and Cleveland — making the Debates far more than a million dollar effort.

the Advisory Committee, Carla Hills and Newton Minow, after they discussed the pool of journalists with the candidates' representatives.

The League preferred to keep the candidates' representatives entirely out of the panel selection process. However, because of the tremendous significance of the Cleveland Debate, the candidates' representatives insisted on being involved in almost every decision — large and small.

# A Look Back...and a Look Ahead

Scholars Steven Chaffee and Jack Dennis write that while many questions about debates need more study and research, one conclusion drawn from studies of the 1960 and 1976 presidential debates is that "the debates make substantial contributions to the process of democracy and perhaps even to the longerterm viability of the system. The research offers a great deal of support for the proposition that the debates serve important informational functions for voters."1 They enable the voter to weigh the alternatives being proposed by each candidate, and 'as an informationgathering device they have the unique virtue of allowing a simultaneous consideration of the alternatives, "2 without which the voter is forced to gather information from "a large series of such discontinuous, one-sided presentations as advertisements, news reports of speeches, and party conventions."3

When scholars, historians and political ob-

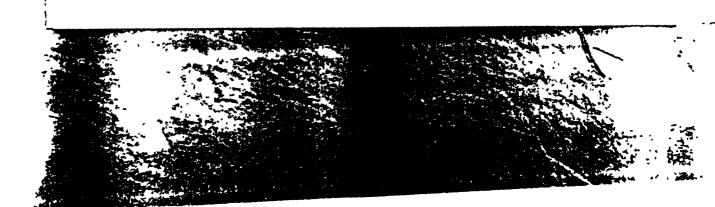
servers write the definitive history of the Presidential Debates, how will they be vit What contributions did they make towarc democratic system of government? How the League's experience as sponsor — bc successes and its failures — serve to imp the quality of debates in the future?

Although it is too early to achieve an historical perspective, it is possible to massome telling observations about the sign cance of the 1980 Presidential Debates are the lessons to be learned. The nature and quality of the 1984 presidential campaign fast-approaching event — will be affected is how constructively we use the intervening time to evaluate the 1980 Presidential Debit experience in order to build a better one in 1984.

Presidential Debates in 1984? Yes. Presidential Debates every four years are now becoming the norm: never before have we had debates in consecutive presidential election. This nascent tradition, together with voters heightened sense of entitlement — a right to see and hear presidential candidates debate the issues at the same time, in the same place and under the same conditions — will weigh heavily against the reluctance of future candidates to participate.

But even if the weight of voter expectation overrides the resistance of major-party candidates, the complex problems surrounding the participation of minor-party and independent candidates remain. In a 1979 report, the 2 Century Fund Task Force on Televised Presidential Debates called this "the single most difficult issue confronting Presidential Debates." (The 20th Century Fund is an independent research foundation that studies economic, political and social institutions a issues.) In 1980, the League tackled the issues with its eligibility criteria. That approach will be a starting point for all future efforts to ser rules for debate participation.

<sup>&#</sup>x27;lbid., p. 99.



<sup>&#</sup>x27;The Past and Future of Presidential Debates, Austin Ranney, Ed. "Presidential Debates: An Empirical Assessment" by Steven H. Chaffee and Jack Dennis, 1979, American Enterprise Institute, p. 98.

<sup>&</sup>lt;sup>1</sup>lbid., p. 99.

### Backstage at the Debates

in 1975, the Federal Communications Commission ruled that debates could be exempt from the 'equal time' restrictions of Section 315 of the Communications Act of 1934 if sponsorship was independent of both broadcasters and candidates and the debates could be classified as bona fide news events. Thus, in 1976 and 1980, the League served as the independent sponsor of the Debates, which were covered by the broadcast media as news events.

- 45.8 million households, approximately 120 million viewers, in the United States watched the Carter-Reagan Debate.
- 1,204 members of the media were present in Baltimore to cover the Anderson-Reagan Debate; 1,632 media representatives were in Cleveland to cover the Carter-Reagan Debate. This included still photographers and print, TV, radio and foreign journalists.
- The Voice of America broadcast the Debates live or tape-delayed in English to a worldwide listening audience. VOA's 39 language services used excerpts of the Debates in translation for newscasts. The Debates were broadcast live in Spanish to all of Latin America.

The League itself gives the 1980 Presidential Debates experience mixed reviews. It takes pride in the history-making nature of its efforts. And it takes pride in adhering to its main goal. The League's persistence did enable American voters, in record-breaking numbers, to hear significant presidential candidates debating the issues. It met an unquestionable "consumer demand": an October 1980 national public opinion poll found that 73 percent of the people surveyed wanted such debates. Voters had two opportunities to make side-by-side comparisons of candidates and their positions on the issues. In an election characterized by slick candidate packages - 30- and 60-second radio and television advertisements and canned speeches - the League Debates gave the voters the solid information they needed to help them cast an informed vote.

Yet despite the clear demand from voters for this service, the 1980 Presidential Debates were in constant jeopardy. League plans for a comprehensive series of four Debates — three among presidential candidates and one

among their running mates — had to be abandoned; a three-way Debate never took place; and because the major-party candidate met only once, that Debate took on all the burdens of a "winner-take-all" event. Issues concerning structure and format were negotiated to the minutest detail. Candidates were unwilling to try new formats, and they threatened to walk away from debating at many turns if they did not get what they wanted.

These difficulties faced by the League in 1980 will be facing the League or any other debates sponsor in the future. Whenever a major candidate sees disadvantages in sharing a platform with an opponent, a debate may not take place. And whenever the smallest feature of the plan seems disadvantageous, the threatowalk away can hold the effort hostage. To ensure that improved debates become a regular part of every presidential election, are to examine and improve the political communications process (how candidates communicate to voters their stands on issuethe LWVEF has embarked on a three-year

Above, LWVEF Chair Ruth J. Hinerfeld briefs the press the day before the Cleveland debate between Jimmy Carter and Ronald Reagan.

project leading up to the 1984 presidential election. The League will reach out to the 73 percent of Americans who have said they are in favor of debates through their various organizations, institutions and as individuals.

The purpose of this effort is to raise issues about the ways in which candidates communicate with the electorate, and to educate the public about debates and the whole political communication process. The events will include town meetings, opinion leader gatherings and hearings among others. Above all, this project will identify a mobilize the debates constituency so that inconstituency can demand of future candidithat they face each other and the public in open exchange of ideas.

The League's primary goal is to see that presidential debates occur in 1984 and in tage future, and that the debates process continuous to be improved. The League's experience as sponsor of Presidential Debates in 1976 ar 1980, combined with the long tradition of state and local League-sponsored candidate events, places the organization in an ideal position to ensure that this happens.



# Appendix A 1980 Presidential Forums\*

#### First Presidential Forum

Wednesday, February 20, 1980

8:30-10:00 p.m. EST

Manchester, New Hampshire

Moderator:

Howard K. Smith, broadcast

journalist

Panelists:

Joseph Kraft, syndicated

columnist

Elleen Shanahan, managing editor, Washington Star

Candidates:

Representative John Anderson Senator Howard Baker

Ambassador George Bush Governor John Connally Representative Philip Crane

Senator Robert Dole Governor Ronald Reagan

Format:

Part I. Seven questions were posed. The candidate to whom a question was first addressed had two minutes to respond; the other six candidates each had one minute to respond. Total: 1 hour.

Part II. Individuals from the audience directed their questions to a specific candidate who was given one and one-half minutes to respond. Total:

23 minutes.

Part III. Each candidate was given one minute to make a closing statement. Total: 7

minutes.

\*Questions for each forum could cover any subject.

#### Second Presidential Forum

Thursday, March 13, 1980 8:00-9:30 p.m. CST Chicago, Illinois

Moderator:

Howard K. Smith

Candidates:

Representative John Anderson Ambassador George Bush Representative Philip Crane Governor Ronald Reagan

Format:

Part I. The moderator directed questions to specific candidates; after the initial response, all the candidates were free to participate in a discussion of the issue. Total: 90 minutes.

Part II. Individuals from the audience asked questions; the format for response was the same as in Part I. Total: 26

minutes.

Part III. Each candidate was allotted one minute for a closing statement. Total: 4 min-

utes.

### Third Presidential Forum

Wednesday, April 23, 1980 8:00-9:00 p.m. CST Houston, Texas

Moderator:

Howard K. Smith

Candidates:

Ambassador George Bush Governor Ronald Reagan

Format:

Same as in Second Presidential Forum. Part I: 45 minutes. Part II: 13 minutes. Part III: 2

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minutes.

# Appendix B 1980 Presidential Debates\*

### First Presidential Debate

Sunday, September 21, 1980 10:00-11:00 p.m. EST Baltimore, Maryland

Moderator:

Bill Moyers, public television

commentator/producer

Panelists:

Charles Corddry, reporter,

Baltimore Sun

Soma Golden, editorial writer,

New York Times

Daniel Greenberg, syndicated

columnist

Carol Loomis, board of editors, Fortune magazine Lee May, reporter, Los Angeles

Times

Jane Bryant Quinn, columnist,

Newsweek magazine

Candidates:

Representative John Anderson

Governor Ronald Reagan

Format:

Each panelist asked one question. Each candidate was given two and one-half minutes to respond; then each had an additional one minute 15 seconds to challenge the other's response. Each candidate was allotted three minutes for a closing

statement. Total: one hour.

### **Second Presidential Debate**

Tuesday, October 28, 1980 9:30-11:00 p.m. EST Cleveland, Ohio

Moderator:

Howard K. Smith

Panelists: Harry Ellis, Washington staff

correspondent, Christian

Science Monitor

William Hilliard, assistant managing editor, Portland

Oregonian

Marvin Stone, editor, U.S. News and World Report

Barbara Walters,

correspondent, ABC News President Jimmy Carter

Governor Ronald Reagan

Format:

Candidates:

Part I. Each panelist directe one question to a candidate who was given two minutes respond. The panelist then asked a follow-up question, and the candidate had one minute to respond. The san question was directed to the other candidate, who had the same opportunity to respond to that question and a follow-up question. Each candidate was then given one minute to challenge the other's response. Total: 40 minutes.

Part II. Each panelist aske one question to which eac candidate had two minute respond. Each candidate verthen given one and one-haminutes for a rebuttal. Each ad one minute for a surrobuttal. Total: 40 minutes.

Part III. Each candidate har three minutes for a closing statement. Total: 6 minute -

<sup>\*</sup>Questions for each debate could cover any subject.

### Appendix C

### **Public Advisory Committee\***

Carla Hills, Co-Chair Robert Anderson Jerry Apodaca James David Barber Charles Benton Shirley Temple Black Douglass Cater Sol Chaikin Archibald Cox Lee Hanna Dorothy Height Harriet Hentges Ruth J. Hinerfeld Newton Minow, Co-Chair Benjamin Hooks Pat Hutar Jim Karayn Jewel Lafontant Lee Mitchell Austin Ranney Sharon Percy Rockefeller Carmen Delgado Votaw Paul Wagner Charls Walker Caspar Weinberger

Bill Brock, Chairman Republican National Committee Ex-officio

John White, Chairman

Democratic National Committee

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<sup>\*</sup>When the Advisory Committee was formed, Anne Armstrong served as one of the co-chair. She resigned on July 2, 1980 to play a major role in the Republican presidential campaign. She succeeded as co-chair by Carla Hills.

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

### 2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2000 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College (at least 270 votes), regardless of the popular vote, is elected President.

### 3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

### C. APPLICATION OF CRITERIA

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2000, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: January 5, 2000

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### FEDERAL ELECTION COMMISSION

999 E Street, N.W. Washington, D.C. 20463

### FIRST GENERAL COUNSEL'S REPORT

### **MUR 4987**

Date Complaint Filed: March 21, 2000 Date of Notification: March 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

**COMPLAINANTS:** 

The Reform Party of the United States of America

Patrick J. Buchanan

Pat Choate

**Buchanan Reform Committee** 

Angela M. Buchanan

**RESPONDENTS:** 

Commission on Presidential Debates

Paul G. Kirk, Jr., Co-Chairman of the Commission on

Presidential Debates

Frank J. Fahrenkopf. Jr., Co-Chairman of the Commission

on Presidential Debates

Democratic National Committee and Andrew Tobias, as

treasurer

Republican National Committee and Alex Poitevint, as

treasurer

RELEVANT STATUTES AND REGULATIONS:

2 U.S.C. § 431(4)

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 441b(b)(2)

11 C.F.R. § 100.7(b)(21)

11 C.F.R § 102.1(d)

11 C.F.R. § 104.1(a)

11 C.F.R. § 110.13

11 C.F.R. § 114.1(a)(2)(x)

11 C.F.R. § 114.2(b)

11 C.F.R. § 114.4(f)

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### INTERNAL REPORTS CHECKED: None

### FEDERAL AGENCIES CHECKED: None

### **MUR 5004**

Date Complaint Filed: April 24, 2000 Date of Notification: April 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigsby Statute of Limitations: January 6, 2005

**COMPLAINANTS:** 

Natural Law Party John Hagelin John Moore

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**RESPONDENTS:** 

Commission on Presidential Debates

Paul G. Kirk, Jr., Co-Chairman of the Commission on

Presidential Debates

Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission

on Presidential Debates

Democratic National Committee and Andrew Tobias, as

Republican National Committee and Alex Poitevint, as

treasurer

**RELEVANT STATUTES** AND REGULATIONS:

2 U.S.C. § 431(4)

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 441b(b)(2)

11 C.F.R. § 100.7(b)(21)

11 C.F.R. § 102.1(d)

11 C.F.R. § 104.1(a)

11 C.F.R. § 110.13

11 C.F.R. § 114.1(a)(2)(x)

11 C.F.R. § 114.2(b)

11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

**MUR 5021** 

Date Complaint Filed: May 30, 2000 Date of Notification: June 2, 2000 Date Activated: June 21, 2000

Staff Member: Delbert K. Rigsby Statute of Limitations: January 6, 2005

COMPLAINANTS: Mary Wolhford

Bill Wolhford

RESPONDENTS: Commission on Presidential Debates

Paul G. Kirk, Jr., Co-Chairman of the Commission on

Presidential Debates

Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission

on Presidential Debates

RELEVANT STATUTES 2 U.S.C. § 431(4)

**AND REGULATIONS:** 2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 433

2 U.S.C. § 434

2 U.S.C. § 441b(a)

2 U.S.C. § 441b(b)(2)

11 C.F.R. § 100.7(b)(21)

11 C.F.R. § 102.1(d)

11 C.F.R. § 104.1(a)

11 C.F.R. § 110.13

11 C.1 .R. 9 110.15

11 C.F.R § 114.1(a)(2)(x)

11 C.F.R. § 114.2(b)

11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

### I. GENERATION OF MATTERS

These matters arose from three complaints filed with the Federal Election Commission (the "Commission"). The first complaint, MUR 4987, was submitted by the Reform Party of the United States of America; Patrick J. Buchanan, a candidate for the Reform Party nomination for President of the United States; Pat Choate, Chairman of the Reform Party; Buchanan Reform Committee, the principal campaign committee of Mr. Buchanan; and Angela M. Buchanan (collectively, the "Reform Party"). The second complaint, MUR 5004, was submitted by the Natural Law Party; John Hagelin, a candidate for the Natural Law Party nomination in 2000; and John Moore, a member of the Natural Law Party's Executive Committee (collectively, the "Natural Law Party"). The third complaint, MUR 5021, was submitted by Mary Wohlford and Bill Wohlford (collectively, "Wohlford").

The three complaints allege that the criteria the Commission on Presidential Debates (the "CPD") adopted for selecting candidates to be invited to participate in debates are subjective and thus, violate 11 C.F.R. § 110.13(c). Furthermore, the Reform Party and Natural Law Party complaints allege that as a result of the subjective criteria, the CPD has violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 433 by failing to register the CPD as a political committee with the Commission, 2 U.S.C. § 441a(f) by accepting prohibited contributions as a political committee, and 2 U.S.C. § 434 by failing to file reports of receipts and disbursements with the Commission.

Additionally, the Reform Party and Natural Law Party complaints allege that the Democratic National Committee (the "DNC") and Andrew Tobias, as treasurer, and the Republican National Committee (the "RNC") and Alex Poitevint, as treasurer, have violated

2 U.S.C. § 441b(a) by accepting prohibited contributions from the CPD and 2 U.S.C. § 434 by failing to report contributions received from the CPD. The Wohlford complaint made no allegations against the DNC and the RNC.

All of the respondents in MURs 4987, 5004 and 5021 have responded to the complaints.<sup>1</sup>
See Attachments 1 through 5.

### II. FACTUAL AND LEGAL BACKGROUND

#### A. Law

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); see also 11 C.F.R. § 114.2(b). The Act defines a contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); see also 2 U.S.C. § 441b(b)(2). A contribution is also defined in the Commission's regulations at 11 C.F.R. § 100.7(a)(1). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The Act defines an expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); see also 2 U.S.C. § 441b(b)(2).

The Commission's regulations at 11 C.F.R. § 100.7(b)(21) specifically exempt expenditures made for the purpose of staging candidate debates from the definition of contribution provided that the debates meet the requirements of 11 C.F.R. §§ 110.13 and

In responding to MURs 5004 and 5021, the CPD submitted cover letters responding to the allegations and attached copies of the response that it submitted to MUR 4987.

114.4(f). Non-profit organizations described in 26 U.S.C. §§ 501(c)(3) or 501(c)(4) that do not endorse, support, or oppose political candidates or political parties may stage candidate debates.

11 C.F.R. § 110.13(a)(1). The debates must include at least two candidates, and not be structured to promote or advance one candidate over another. 11 C.F.R. §§ 110.13(b)(1) and (2).

Organizations that stage presidential debates must use pre-established objective criteria to determine which candidates may participate in the debate. 11 C.F.R. § 110.13(c). With respect to general election debates, staging organizations shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. *Id*.

If a corporation staged a debate in accordance with 11 C.F.R. § 100.13, the expenditures incurred by that sponsoring corporation would be exempt from the definition of contribution.

See 11 C.F.R. §§ 100.7(b)(21), 114.1(a)(2)(x) and 114.4(f)(1). As long as the sponsoring corporation complied with 11 C.F.R. § 110.13, other corporations may provide funds to the sponsoring corporation to defray expenses incurred in staging the debate without being in violation of the Act. 11 C.F.R. § 114.4(f)(3).

The Act defines the term "political committee" to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the Act and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a).

## B. CPD's Criteria for Selecting Candidates to Participate in the 2000 General Election Debate

The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States. *See* Attachment 1 at 5. The Co-Chairmen of the CPD are Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr. The CPD sponsored two presidential debates during the 1988 general election, three presidential debates and one vice presidential debate in 1992, and two presidential debates and one vice presidential debate in 1996. *Id.*The CPD plans to sponsor three presidential and one vice presidential debate during the 2000 general election. The CPD accepts donations from corporations and other organizations to fund these debates.

On January 6, 2000, the CPD announced its candidate selection criteria for the 2000 general election debates. *Id.* at 2. It stated that "the purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency." *Id.* The criteria are: (1) evidence of the candidate's constitutional eligibility to serve as President of the United States pursuant to Article II, Section 1 of the United States Constitution; (2) evidence of ballot access, such as the candidate appearing on a sufficient number of state ballots to have at least a mathematical chance of securing an Electoral College majority; and (3) indicators of electoral support by having a level of support of at least fifteen percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination of

eligibility.<sup>2</sup> Id. at 9, 10. A candidate must meet all three criteria to participate in the debate.

The CPD also stated that it will determine participation in the first scheduled debate after Labor

Day 2000. Id. at 75. Furthermore, the CPD will extend invitations to participate in the vice

presidential debate to the running mates of the presidential candidates qualifying for participation

in the CPD's first presidential debate, and invitations to participate in the second and third

debates will be based upon the same criteria prior to each debate. Id.

#### C. Complaints

#### 1. Reform Party Complaint

The Reform Party alleges that the CPD was created to provide the Republican and Democratic Parties with control over the presidential and vice presidential candidate debates in the general election and to exclude third party candidates from those debates. The Reform Party also states that the Republican and Democratic Parties continue to control the presidential debates sponsored by the CPD. Thus, the Reform Party argues that the CPD does not satisfy the requirement that staging organizations not support or oppose political parties. 11 C.F.R. § 110.13(a). Furthermore, the complaint states that the CPD developed subjective criteria for selection of candidates to participate in the 2000 general election debate which does not satisfy 11 C.F.R. § 100.13(c) and thus, contributions made to the CPD and expenditures incurred by the CPD are prohibited contributions under 2 U.S.C. § 441b. The Reform Party also states that the CPD must register as a political committee and report its receipts and expenditures.

Those five polling organizations are the ABC News/Washington Post; CBS News/New York Times; NBC News/Wall Street Journal, CNN/USA Today/Gallup; and Fox News/Opinion Dynamics. The CPD has also retained Frank Newport, Editor-in-Chief of the Gallup Poll, as a consultant in implementing the 2000 candidate selection criteria. Id. at 9, 10.

general election.

Specifically, the complaint challenges the third criterion, the level of electoral support, as subjective because it is based on the use of polls. The Reform Party criticizes the use of polling because they believe that polls have significant margins of error which make it difficult to determine the actual level of support. Furthermore, the Reform Party questions the CPD's polling methodology to take the average of five polls which may have different sample sizes, and target different populations, such as eligible voters versus eligible voters most likely to vote. The complaint also argues that in using polls, the CPD grants complete discretion to the polling organizations with respect to deciding the portion of the electorate polled, the wording of the questions, and the names of the candidates about which the polls inquire. Additionally, the Reform Party argues that the electoral support requirement of fifteen percent is three times the statutory requirement of five percent of the general election vote that presidential candidates of a political party must receive in order for the political party to receive federal funding in the next

Furthermore, the complaint argues that participation in the debates provides extensive television exposure and media coverage, which increases the candidate's ability to communicate his or her message and obtain support of the voters. The Reform Party cites the example of Ross Perot, a third party candidate in 1992, who had support of 7% of the electorate in the polls prior to the debates, but received 19% of the vote in the 1992 general election.

The Reform Party complaint requests that the Commission find reason to believe that the CPD's current candidate selection criteria, particularly the level of electoral support in the national electorate criterion, violates the Act and Commission regulations because it is neither pre-existing nor objective, and direct the CPD to substitute the level of electoral support criterion

with the criterion of qualification for public funding in the general election. The complainants also request that the Commission find reason to believe that, as a result of the CPD's candidate selection criteria, the CPD is acting as an illegal, non-reporting political committee receiving and making illegal corporate contributions and expenditures in violation of the Act and the Commission's regulations. Finally, the complainants request that the Commission take action to correct and prevent continued illegal activities of the CPD.

#### 2. Natural Law Party Complaint

The Natural Law Party argues that the CPD's sponsorship of candidate debates is intended to promote the candidates of the Democratic and Republican parties to the exclusion of the candidates of other parties, and thus, the CPD's expenditures in sponsoring the debates are expenditures by a corporation in connection with an election to public office in violation of 2 U.S.C. § 441b(a). Furthermore, the Natural Law Party complaint states that the CPD's sponsorship of the debates does not satisfy the requirement of 11 C.F.R. § 110.13(a) to be nonpartisan because the CPD was created by the Democratic and Republican parties and continues to serve their joint interest in limiting the participation of third party candidates. The complaint also argues that the CPD does not satisfy the requirement of 11 C.F.R. § 110.13(c) to use pre-established, objective criteria because the level of electoral support criterion depends upon polling results that are approximations with "substantial" margins of error and are influenced by the design of the polling questions. The Natural Law Party alleges that CPD's expenditures incurred in sponsoring the presidential debates are prohibited contributions to the DNC and RNC in violation of 2 U.S.C. § 441b(a), and any corporate contributions received by the CPD are prohibited contributions. Additionally, the complaint alleges that the CPD is a

political committee within the meaning of 2 U.S.C. § 431(4)(A), and has failed to report contributions as required by the Act. The Natural Law Party also argues that the DNC and the RNC have failed to report contributions from the CPD.

The Natural Law Party complaint requests that the Commission find reason to believe that the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 441b(a) by making and/or accepting prohibited contributions. The Natural Law Party also requests that the Commission find reason to believe that the CPD has violated or is about to violate 11 C.F.R. § 110.13 by staging candidate debates in a partisan manner and without pre-established, objective criteria. Additionally, the Natural Law Party requests that the Commission find reason to believe that the CPD has violated or are about to violate 2 U.S.C. § 433 by failing to register as a political committee, and the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 434 by failing to report contributions and expenditures. Finally, the Natural Law Party requests that the Commission enjoin the CDP's sponsorship of debates as presently proposed, require the CPD to register as a political committee, and require the CPD, DNC and RNC to make required reports.

#### 3. Wohlford Complaint

The Wohlford complaint alleges that the CPD's criteria for selecting candidates to participate in the 2000 general election is subjective, specifically the criterion which requires a candidate to demonstrate electoral support by averaging 15% in five selected polls, because polling is neither fair nor objective. Furthermore, the Wohlford complaint states that instead of the electoral support criterion, an example of an objective criterion would be to require a candidate to have spent a certain monetary amount on his or her campaign by a specific time

prior to the first debate. Finally, the complaint states that the Commission has two choices to remedy the alleged violations, such as excluding the CPD as a sponsoring organization if they maintain the criteria now published or require that the CPD eliminate polling from its criteria and substitute "truly objective" criteria.

#### D. Responses

 Responses from the CPD to the Reform Party, Natural Law Party and Wohlford Complaints

In response to the complaints, the CPD argues that no CPD Board member is an officer of either the Democratic National Committee or the Republican National Committee, and the CPD receives no funding from the government or any political party. Attachment 1 at 5. The CPD also argues that any references to its founding as a bipartisan effort was an effort to ensure that it was not controlled by any one party, not an effort by the two major parties to control CPD's operations or to exclude non-major party candidates in CPD-sponsored debates. *Id.*, footnote 6.

In regard to its candidate selection criteria, the CPD argues that the purpose of the candidate selection criteria is to identify those candidates, regardless of party, who realistically are considered to be among the principal rivals for the Presidency. Attachment 1 at 2.

Moreover, in regard to the third criterion, the CPD states that it sets forth a bright line standard with respect to electoral support, which is at least 15% of the national electorate as determined by the average results of five selected national public opinion polling organizations at the time of the CPD's determination of eligibility before each debate. Attachment 1 at 3. The CPD argues that in promulgating the regulation, 11 C.F.R. § 110.13, the Commission permits the staging organization to determine the objective criteria. *Id*.

With respect to the issue of electoral support and polling, the CPD argues that the Commission has ruled in a previous matter regarding its 1996 candidate selection criteria that it is appropriate for the criteria to include a measure of candidate potential or electoral support and to use polls to measure that support. Attachment 1 at 3. Moreover, the CPD states that the five polling organizations that it will employ are well-known, well-regarded, and will poll frequently throughout the 2000 election. Id. at 16. The CPD also argues that because public opinion shifts, it will use the most recent poll data available before the debates. Id. In regard to any methodological differences among the polls, the CPD states that taking the average of five polls may reduce the random error that could come from using only one source, and averaging does not invalidate the results. Id. at 16. Furthermore, the CPD, citing the declaration of Dorothy Ridings, a CPD Board member, argues that requiring a level of electoral support of 15% of the national electorate is reasonable because the "fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of support." Id. at 14.

In regard to the Reform Party's argument that a candidate's eligibility for public funding in the general election should be used instead of electoral support of 15 % of the national electorate, the CPD states that it is opposed to a candidate's eligibility for public funding as a criterion because it is premised on the results of the previous election and not at all on the level of present public interest in the candidates running for office. Attachment 1 at 3.

The CPD also notes that John Anderson achieved this level of electoral support prior to the first presidential debate in 1980 and was invited by the League of Women Voters to participate in that debate. Furthermore, the CPD states that other presidential candidates, such as George Wallace in 1968 and Ross Perot in 1992, had high levels of support. *Id.* at 14

# 2. Response from the DNC to Reform Party and Natural Law Party Complaints

In response to the complaints, the DNC urges the Commission to dismiss the complaints against them and find no reason to believe that the DNC has violated the Act or Commission regulations. Furthermore, the DNC argues that it is independent of the CPD and that Mr. Paul Kirk, CPD Co-Chairman, who also served as DNC Chairman from 1985-1989, has held no office and played no role in the DNC since 1989. Attachment 3. The DNC also states that no DNC member, officer or employee sits on the Board of the CPD, and the DNC does not now play, nor has it ever played, any role in determining CPD's criteria for candidate selection for the debates. Attachments 2 and 3. Additionally, the DNC argues that any violation by the CPD of the Commission's debate regulations would not constitute an in-kind contribution to the DNC, which is distinct from a presidential candidate. Attachment 2.

## 3. Response from the RNC to the Reform Party and Natural Law Party Complaints

The RNC requests that the Commission find no reason to believe that violations of the Act occurred.<sup>4</sup> Furthermore, the RNC states that the complaints should be dismissed against the RNC because the CPD is not an affiliated committee or "alter ego" of the RNC. Attachments 4 and 5. The RNC acknowledges that Mr. Frank Fahrenkopf, Co-Chairman of the CPD, was Chairman of the RNC during the founding of the CPD, but the CPD was never an official or

The RNC was a respondent in MUR 4473 in which Perot '96, Inc. challenged the CPD's 1996 candidate selection criteria for participation in the debates. The RNC's response to MUR 4473 was attached to its response to MUR 4987 and incorporated by reference.

MURs 4987, 5004, and 502 First General Counsel's Ri

approved organization of the RNC. Id. Finally, the RNC states that no CPD Board Member is an officer of the RNC, and that the RNC neither organized nor controls the CPD. Id.

#### III. **ANALYSIS**

Based upon the available evidence, it appears that CPD has complied with the requirements of section 110.13 of the Commission's regulations governing sponsorship of candidate debates. While the Reform Party and the Natural Law Party argue that the CPD's Co-Chairmen, Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., are former Chairmen of the Democratic and Republican Parties respectively, they have not provided evidence that the CPD is controlled by the DNC or the RNC. There is no evidence that any officer or member of the DNC or the RNC is involved in the operation of the CPD. Moreover, there does not appear to be any evidence that the DNC and the RNC had input into the development of the CPD's candidate selection criteria for the 2000 presidential election cycle. Thus, it appears that the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties. 11 C.F.R. § 110.13(a).

Furthermore, CPD's criteria for participation in the candidate debates appear to be preestablished, objective criteria as required by 11 C.F.R. § 110.13(c), and not designed to result in the selection of certain pre-chosen participants. The CPD's criteria for determining who may participate in the 2000 general election presidential debates consist of constitutional eligibility, appearance on sufficient state ballots to achieve an Electoral College majority, and electoral support of 15% of the national electorate based upon an average of the most recent polls of five national public opinion polling organizations at the time of determination of eligibility. The complainants acknowledge that the first and second criteria, constitutional eligibility and ballot

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access, are objective, but argue that the third criterion, level of electoral support, is subjective because it is based upon polling.

The Commission has accorded broad discretion to debate sponsors in determining the criteria for participant selection. In promulgating 11 C.F.R. § 110.13(c), the Commission stated:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . . .

.... Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes that there are too many candidates to conduct a meaningful debate.

60 Fed. Reg. 64,262 (December 14, 1995).

The CPD's candidate selection criteria have been challenged in the past. In MURs 4451 and 4473, the Natural Law Party and Perot '96, Inc. filed complaints with the Commission against the CPD regarding its 1996 candidate selection criteria. The Commission found no reason to believe that the CPD violated the law by sponsoring the presidential debates or by failing to register and report as a political committee. The Commission noted that "the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use." Statement of Reasons in MURs 4451 and 4473 at 8 (April 6, 1998). With respect to polling and electoral support, the Commission noted in MURs 4451 and 4473 that it declined to preclude the use of polling or "other assessments of a candidate's chances of winning the nomination or election" when promulgating 11 C.F.R. § 110.13. Furthermore, the Commission stated that

In those matters, the Commission rejected the Office of General Counsel's recommendations that the Commission find reason to believe that the CPD violated the law.

questions can be raised regarding any candidate assessment criterion and "absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion." *Id.* at 9. Finally, in MURs 4451 and 4473, the Commission referred to the Explanation and Justification for 11 C.F.R. § 110.13 which states that reasonableness is implied when using objective criteria. *Id.* In view of the Commission's prior decisions, the CPD is not required to use qualification for public funding in the general election as a debate participant criterion as the Reform Party argues.

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it has proposed for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate selection criteria were: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern.

With respect to signs of national newsworthiness and competitiveness, the CPD listed factors, such as the professional opinions of Washington bureau chiefs of major newspapers, news magazines and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional eligibility, ballot access, and a level of electoral support of 15% of the national electorate based upon the average of polls conducted by five major polling organizations, appear to be relatively

easier to determine which candidates will qualify, and appear to be even more objective than the 1996 candidate selection criteria. Given this, and the fact that the Commission did not find a problem with the 1996 criteria, it appears that the CPD's candidate selection criteria for participation in the 2000 general election debates are in accordance with the requirements of 11 C.F.R. § 110.13.

Based upon the available evidence, it appears that the CPD satisfies the requirements of 11 C.F.R. § 110.13 to stage the debates, the CPD's expenditures are not contributions or expenditures subject to the Act, and the CPD does not meet the definition of a political committee subject to the registration and reporting requirements of the Act. 6 Moreover, any contributions from corporations to the CPD would not be prohibited contributions in violation of 2 U.S.C. § 441b(a).

For the foregoing reasons, the Office of General Counsel recommends that the Commission find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 441a(f) by accepting prohibited contributions from corporations or making contributions to the Democratic National Committee or the Republican National Committee, 2 U.S.C. § 433 by failing to register as a political committee, or 2 U.S.C. § 434 by failing to report contributions.

Furthermore, the Office of General Counsel recommends that the Commission find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer,

The Reform Party complaint also states generally that the CPD's expenditures will benefit the presidential candidates of the Republican and Democratic parties. Since the general election candidates for the Democratic and Republican parties have not been nominated, the complainants could not allege any violations against the committees of those candidates.

violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates. The Office of General Counsel also recommends that the Commission find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates.

#### IV. RECOMMENDATIONS

- 1. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 4987.
- 2. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
- 3. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 TS.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
- 4. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5004.
- 5. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
- 6. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
- 7. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5021.
- 8. Approve the appropriate letters.

### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)
Commission on Presidential Debates; Paul G. Kirk, Jr., Co-Chairman of the Commission on Presidential Debates; Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission on Presidential Debates; Democratic National Committee and Andrews Tobias, as treasurer; Republican National Committee and Alex Poitevint, as treasurer.	MUR 4987 ) ) ) ) ) ) ) ) ) ) )
Commission on Presidential Debates; Paul G. Kirk, Jr., Co-Chairman of the Commission on Presidential Debates; Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission on Presidential Debates; Democratic National Committee and Andrew Tobias, as treasurer; Republican National Committee and Alex Poitevint, as treasurer.	) MUR 5004 ) ) ) ) ) ) ) ) ) )
Commission on Presidential Debates; Paul G. Kirk, Jr., Co-Chairman of the Commission on Presidential Debates; Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission on Presidential Debates	) MUR 5021 ) ) ) ) )

(Continued)

Federal Election Commission Certification for MURs 4987, 5004, and 5021 July 19, 2000

#### CORRECTED CERTIFICATION

- I, Mary W. Dove, Acting Secretary of the Federal Election Commission, do hereby certify that on July 19, 2000 the Commission decided by a vote of 6-0 to take the following actions in MURS 4987, 5004, and 5021:
  - 1. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 4987.
  - 2. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
  - 3. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
  - Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5004.

(Continued)

Federal Election Commission Certification for MURs 4987, 5004, and 5021 July 19, 2000

Page 3

- 5. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
- 6. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
- 7. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5021.
- 8. Close the files in MUR 4987, MUR 5004, and MUR 5021.

Commissioners Mason, McDonald, Sandstrom, Smith,

Thomas, and Wold voted affirmatively for the decision.

Attest:

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Mary W. Dove

Acting Secretary of the

Commission

Received in the Secretariat: Thurs., July 13, 2000 4:30 p.m. Circulated to the Commission: Thurs., July 13, 2000 12:00 p.m. Deadline for vote: Wed., July 19, 2000 4:00 p.m.

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ECEIVED COMMISSION FEDERAL ELECTION COMMISSION SECRETARIAT 999 E Street, NW Washington, D.C. 20463 2004 HAR 15 P. 2- 06 FIRST GENERAL COUNSEL'S REPORT MUR: 5378 DATE COMPLAINT FILED: July 17, 2003 DATE OF NOTIFICATION: July 24, 2003 DATE ACTIVATED: February 2, 2004 EXPIRATION OF STATUTE OF LIMITATIONS: October 3, 2005 John Hagelin Ralph Nader Patrick Buchanan Howard Phillips Winona LaDuke Natural Law Party Green Party of the United States Constitution Party Commission on Presidential Debates 2 U.S.C. § 431(9)(B)(ii)

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RELEVANT STATUTES AND REGULATIONS<sup>1</sup>

RESPONDENT:

COMPLAINANTS:

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INTERNAL REPORTS CHECKED: FEDERAL AGENCIES CHECKED:

None None

2 U.S.C. § 433

2 U.C.S. § 434

2 U.S.C. § 441b(a)

11 C.F.R. § 100.92

11 C.F.R. § 110.13

11 C.F.R. § 114.4(f)

11 C.F.R. § 100.154

2 U.S.C. §§ 441a(a) and (f)

<sup>11</sup> C.F.R. §§ 100.92 and 100.154 were previously codified at §§ 100.7(b)(21) and 100.8(b)(23) during the 2000 election cycle.

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#### INTRODUCTION

In this matter, several third parties and their 2000 candidates challenge the eligibility of 3 the Commission on Presidential Debates ("CPD") to stage presidential and vice-presidential 4 debates, both retrospectively, in 2000 and prospectively, in 2004. Previously, in MURs 4987 and 5 5004, the Commission rejected eligibility challenges, and courts in the ensuing dismissal suits 6 7 found in favor of the Commission. Complainants here repeat some of the same assertions made in the previous MURs. However, they also proffer what they term "newly obtained evidence" 8 stemming from the CPD's decision to exclude third-party candidates from debate audiences in 9 2000. Complainants contend that as a result of the CPD's alleged ineligibility to stage candidate 10 debates, the CPD has violated several provisions of the Federal Election Campaign Act of 1971, 11 as amended (the "Act") from which it would otherwise be exempted. For the reasons discussed 12 below, this Report recommends that the Commission find no reason to believe that the CPD 13 violated the Act and close the file.2 14

#### 11. **DISCUSSION**

Since 1988, the CPD, a nonprofit corporation, has staged candidate debates pursuant to 2 U.S.C. § 431(9)(B)(ii)'s safe harbor, which exempts from the definition of "expenditures" "nonpartisan activity designed to encourage individuals to vote or register to vote." Commission regulations provide that "[n]onprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage

On February 11, 2004, complainants filed a suit in federal district court against the Commission, alleging that it had not acted upon their complaint within the time prescribed by 2 U S.C. §§ 437g(a)(8)(A) and (C) Hagelin, et al. v. FEC, Case No. 1.04cv00202 (HHK). Service of the complaint on the Commission was perfected on February 18, 2004.

- candidate debates in accordance with this section and 11 C.F.R 114.4(f)." 11 C.F.R.
- 2 § 110.13(a)(1). See also 11 C.F.R. §§ 100.92 and 100.154 (exempting funds used to defray
- 3 costs incurred in staging candidate debates in accordance with the provisions of 11 C.F.R.
- 4 §§ 110.13 and 114.4(f) from the definitions of "contribution" and "expenditure," respectively).
- Thus, if the debate staging organization meets the requirements of section 110.13(a)(1), and
- 6 stages debates in accordance with sections 110.13(b) and (c) and 114.4(f), the organization's
- 7 activities are exempt from the definitions of "contribution" and "expenditure."
- 8 Complainants, who challenge only the CPD's eligibility to stage debates pursuant to
- 9 2 U.S.C. § 431(9)(B)(ii) and 11 C.F.R. § 110.13(a)(1), contend that the CPD's alleged
- ineligibility subjects it to provisions of the Federal Election Campaign Act of 1971, as amended
- 11 (the "Act"), from which it would otherwise be exempt. Specifically, complainants allege that the
- 12 CPD, as a corporation, cannot legally make contributions or expenditures, see 2 U.S.C.
- § 441b(a). By inference, complainants appear to allege that CPD made prohibited corporate
- 14 contributions to the Bush-Cheney and Gore-Lieberman campaigns in connection with the 2000
- debates. Alternatively, they allege, the CPD is a political committee, in which case its failure to
- 16 register and report pursuant to 2 U.S.C. δδ 433 and 434 is a continuing violation of the Act.
- 17 Under this theory, by inference, complaints allege CPD made excessive contributions to the
- 18 Bush-Cheney and Gore-Licberman campaigns in 2000. They also allege that CPD received
- cxcessive and corporate contributions. See 2 U.S.C. §§ 441a(a), 441a(f) and 441b(a). Complaint
- 20 at 2, 4, 7-8.

<sup>11</sup> C.F.R. §§ 114 4(f)(1) and (3) provide that corporations staging debates in accordance with 11 C.F.R. § 110.13 may use their own funds to do so, and may also accept donations from other corporations and labor organizations for the purpose of staging the debates.

therefore, should be rejected.

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Complainants seek to attack the CPD's eligibility to stage nonpartisan debates by asserting that the CPD is in fact a partisan organization that "by its consistent pattern of exclusionary behavior and actions, did 'endorse, support or oppose political candidates or political parties." Complaint at 7, 9. In support, complainants advance two arguments. First, complainants maintain that "[t]he CPD was founded, and is controlled by the Republican and Democratic Parties and their representatives," id. at 4-5, citing the alleged partisan composition of CPD's board of directors and the CPD's founding by co-chairs who were, at that time, chairmen of the Republican National Committee ("RNC") and the Democratic National Committee ("DNC"), respectively. These assertions, however, were previously advanced in MURs 4987 and 5004. In those MURs, the Commission found no reason to believe that the CPD had violated the Act, and in subsequent section 437g(a)(8) dismissal suits brought by the MUR 4987 and 5004 complainants, courts found for the Commission. Complainants' first argument,

In Buchanan v. FEC, 112 F.Supp.2d 58 (D.D.C. 2000), aff'd on different grounds, No. 00-5337 (D.C. Cir. September 29, 2000) ("Buchanan"), brought by complainants in MUR 4987, the court stated that "the General Counsel found, and the FEC agreed, that plaintiffs failed to provide enough evidence to establish a reason to believe that the CPD" did not meet the eligibility requirements of 11 C.F.R. §110.13(a)(1), noting that, among other things, the "General Counsel determined that plaintiffs' evidence failed to show . . . that the 'CPD is controlled by' the two major parties." 112 F.Supp 2d at 70-71. The court further stated that the evidence submitted by plaintiffs included the founding of the CPD in 1985 by its two co-chairs who were then the respective chairmen of the RNC and the DNC and the composition of CPD's board as consisting largely of current and former elected officials of the two major parties and party activists. Id. at 71. The court concluded that "[b]ased on the factual record before it, the FEC did not abuse its discretion in finding that there was no 'reason to believe' that the CPD currently 'do[es] not endorse, support, or oppose political candidates or political parties.' 11 C.F.R. § 110.13(a)(1)." In Naturul Law Party v. FEC, Civ. Action No. 00CV02138 (D.D.C. September 21, 2000), aff'd on different grounds, No. 00-5338 (D.C. Cir. September 29, 2000), brought by complainants in MUR 5004, the court found for the Commission on the merits based on the reasoning set forth in Buchanon. (See Tabs D-G attached to the Response); see also Becker v. FEC, 230 F.3d 381 (1" Cir. 2000) (rejecting challenge by Ralph Nader and others to the Commission's debate regulations). Similar arguments were also rejected by the Commission in MUR 5207, although the matter focused more on CPD's specific selection criteria and less on CPD's eligibility to be a sponsoring organization. Although the MUR 5207 complainant subsequently brought a section 437g(a)(8) suit in the Western District of Washington, the district court dismissed the suit on procedural grounds and the Ninth Circuit affirmed the dismissal.

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Second, complainants point to "newly obtained evidence." Complaint at 2. According to

the complaint, before the first presidential debate in 2000, "the CPD leadership decided to

3 exclude all third-party candidates from attending the presidential debate as audience members," a

4 "decision also applied to all three of the presidential debates and presumptively the vice-

5 presidential debates." Id. at 5. The complaint further alleges that CPD's general counsel

6 prepared and distributed a "face book" of third-party candidates so that CPD personnel could

spot and deny the candidates access to the debate hall even if they had tickets. Id. The

8 complainants support these allegations with references to excerpted deposition testimony,

appended to the complaint, of a CPD co-chair, Frank J. Fahrenkopf, Jr., and of CPD's general

counsel, Lewis K. Loss, both of whom were involved in the exclusion decision.<sup>5</sup>

The crux of complainants' claim is that the CPD's decision to exclude third-party candidates from the 2000 debate audiences was a partisan maneuver. This allegation rests on a deposition statement from Mr. Loss that "[the CPD's] concern was that if a third-party candidate who had not qualified for participation in the debate went to the trouble to get a ticket and attend the debate that it would be for the purpose of campaigning in some way, which seemed to imply the potential for disruption." Complaint at 6.6 From this, complainants derive the conclusion

These depositions were taken during discovery in a lawsuit filed by Ralph Nader against the CPD in 2000. According to press accounts, Nader sued the CPD in federal district court in Massachusetts, alleging that although he had a ticket to an auxiliary room outside the debate hall to view the debate, he was escorted by security personnel off the college campus where the debate was being held. Nader, who settled the case, reportedly received \$25,000 and a letter of apology from the CPD. Will Lister, Nader Claims Victory in Debate Suit Settlement, The Associated Press, April 17, 2002; Maria Recio, Nader Settles Debate Lawsuit, The FORT WORTH STAR-TELEGRAM, April 18, 2002. Thus, the evidence is not exactly "newly obtained." In fact, the exclusion of Nader from the audience of the Boston debates was referred to in passing in the complaint in MUR 5207.

According to CPD's Responses to Interrogatorics in the Nader lawsuit, debate tickets "were distributed the day of the debate to invited guests of the [CPD], the University of Massachusetts, and the campaigns of those participating in the presidential debate." (Tab M to the Response at 12)

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that the CPD "intended the exclusion of all third-party candidates from the debate hall to deny

- 2 these candidates and their parties any 'campaigning' opportunities.'" Id According to
- 3 complainants, although the major party candidates engaged in significant campaigning by
- 4 attending and participating in the televised debates, "the CPD's decision was clearly intended to
- 5 deny third-party candidates any media coverage in the debate hall and/or deny them ready
- 6 availability to the approximately 1,700 news reporters attending the debates." Id. Thus, "the
- 7 CPD acted as a partisan organization to intentionally provide the Republican and Democratic
- 8 Candidates and Parties with valuable benefits that it denied to all other third-party candidates and
- 9 their parties, including Complainants." Id.

In its response, the CPD first notes that the Commission's regulations do not suggest that cligibility to sponsor candidate debates depends on who is permitted to sit in the debate audience and that the federal election laws do not oblige the CPD to admit candidates not qualifying for participation in the debates to the audience so that they can engage in campaigning. Response at 3-4. But "[e] ven if there were some theoretical set of facts where the question of who sits in the audience were relevant to an organization's eligibility to serve as a staging organization," id. at 4, (emphasis in the original), the CPD contends that, under the circumstances, "it is evident that the decision alleged in the complaint was made for the purpose of preventing disruption of the live international television broadcast of the debate," and "had nothing to do with partisanship." Response at 5.

The Response states (and attaches corroborating documentation at Tabs I-L) that "in the period leading up to the first presidential debate in 2000, Mr. Nader and his supporters engaged in conduct that reasonably led the CPD to be concerned about the risk of disruption of the live internationally televised debate," including large rallies, cries of "Let Ralph Debate," certain

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public statements by Mr. Nader, and protests outside of, and a break-in into the CPD's

2 Washington, D.C. offices by Nader supporters. Response at 4. In this context, the isolated

3 reference in the Loss testimony to "campaigning" does not appear to be partisan, particularly

4 where Mr. Loss links it to "the potential for disruption"; "disruption" indicates disorderly

5 conduct, not a mere presence in an audience or access to reporters. Moreover, other sworn

testimony of Mr. Loss, that he "had some serious reservations about a scenario of admitting such

7 a candidate and trying to control the disruption in the context of this particular event with a live

television broadcast," indicates that he was concerned about the potential for disruption, not

partisan opportunities. See excerpt from Deposition of Lewis K. Loss at 48 (appended to the

10 complaint). See also excerpt from Deposition of Frank J. Fahrenkopf, Jr. at 45 (appended to the

complaint) (he thought Mr. Nader might "stand up in the audience, stand up on a chair and say,

oh, I could be on that stage, why won't you let me on the stage. That's what I was concerned

about. And I felt that would be extremely disruptive").

The issue presented by the complaint is not whether CPD's exclusion decision was a good one, or even whether its fears of disruption were well-founded. The issue is whether there is a sufficient basis to conclude the decision may have been animated by partisanship. There is not. The complaint's allegations as to the CPD's motivation are based entirely upon taking the word "campaigning" from its context in the surrounding circumstances and of the sentence in which it appears, and asserting that this word, in and of itself, establishes a partisan motivation. The CPD, on the other hand, has presented substantial information indicating that its decision was based on concerns of potential disruption during live television broadcasts, not partisanship. Moreover, CPD's position draws additional support from other sworn testimony, quoted above, of Mr. Fahrenkopf and Mr. Loss. See Statement of Reasons in MUR 5141 (Moran for Congress,

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issued March 11, 2002) ("mere speculation . . . will not be accepted as true," and "a complaint

- 2 may be dismissed if it consists of factual allegations that are refuted by sufficiently compelling
- 3 evidence produced in responses to the complaint"). Because the complaint's mistaken reliance
- 4 upon a single word, divorced from context, provides no grounds in this matter to question CPD's
- 5 past or continuing eligibility to stage debates, there is no basis upon which to investigate whether
- 6 it has forfeited the statutory and regulatory exemptions available to eligible staging organizations
- 7 and, therefore, there is no reason to investigate the CPD's alleged violations of the Act's
- 8 contribution and expenditure prohibitions and limitations, or its alleged failure to register and
- 9 report as a political committee.

Based on the above, this Office recommends that the Commission find no reason to

- believe that the Commission on Presidential Debates violated 2 U.S.C. §§ 433, 434, 441; (a),
- 12 441a(f), or 441b(a), and close the file.

#### III. RECOMMENDATIONS

- 1. Find no reason to believe that the Commission on Presidential Debates violated 2 U.S.C. §§ 441b(a), 441a(a), 441a(f), 433, or 434.
- 2. Approve the appropriate letters.
- 3. Close the file.

3/12/04

Lawrence H. Norton General Counsel

BY:

Rhonda J. Vosdingh
Associate General Counsel

for Enforcement

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### FEDERAL ELECTION COMMISSION Washington, DC 20463

MAR 2 2 2004

Stacey L. McGraw, Esq. Ross, Dixon & Bell, L.L.P. 2001 K Street, NW Washington, DC 20006

RE:

MUR 5378

Commission on Presidential Debates ·

Dear Ms. McGraw:

On July 24, 2003, the Federal Election Commission notified your client, the Commission on Presidential Debates, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On March 18, 2004, the Commission found, on the basis of the information in the complaint and information provided by your client, that there is no reason to believe your client violated 2 U.S.C. §§ 433, 434, 441a(a), 441a(f), or 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the General Counsel's Report is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1598.

Sincerely,

Lawrence H. Norton

General Counsel

BY: Lawrence L. Calvert Jr.

Deputy Associate General Counsel

for Enforcement

Euclosure: General Counsel's Report



#### FEDERAL ELECTION COMMISSION

WASHINGTON DC 20461

#### BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	
Commission on Presidential Debates	<b>)</b>
Clinton/Gore '96 General Committee,	j
Inc., and Joan C. Pollitt, as Treasurer	)
	) MURs 4451 and 4473
Dole/Kemp '96, Inc., and	)
Robert E. Lighthizer, as Treasurer	)
DNC Services Corporation/Democratic	)
National Committee and Carol Pensky,	)
as Treasurer	)
	)
Republican National Committee and	)
Alec Poltevint, as Tressurer	)
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#### STATEMENT OF REASONS

Chairman Joan Aikens
Vice Chairman Scott E. Thomas
Commissioner Lee Ann Elliott
Commissioner Danny Lee McDonald
Commissioner John Warren McGarry

#### I. INTRODUCTION

On February 24, 1998, the Commission found no reason to believe that the Commission on Presidential Debates ("CPD") violated the law by sponsoring the 1996 presidential debates or by failing to register and report as a political committee. The Commission also found no reason to believe that Clinton/Gore '96 General Committee. Inc., Dole/Kemp '96, and their treasurers (collectively, the "Committees"), violated the law by accepting and failing to report any contributions from CPD. The Commission

closed the file with respect to all of the respondents. The reasons for the Commission's findings are set forth in this statement.

### II. SELECTION OF PARTICIPANTS FOR CANDIDATE DEBATES

#### A. Legal Framework

Under the Federal Election Campaign Act of 1971, as amended ("FECA"), corporations are prohibited from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); see also 11 C.F.R. § 114.2(b). The Commission has promulgated a regulation that defines the term "contribution" to include: "A gift, subscription, loan . . ., advance or deposit of money or anything of value made... for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.7(a)(1). See also 11 C.F.R. § 114.1(a). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The regulatory definition of contribution also provides: "[u]nless specifically exempted under 11 C.F.R. § 100.7(b), the provision of any goods or services without charge . . . is a contribution." Id.

Section 100.7(b) of the Commission's regulations specifically exempts expenditures made for the purpose of staging debates from the definition of contribution. 11 C.F.R. § 100.7(b)(21). This exemption requires that such debates meet the requirements of 11 C.F.R. § 110.13, which establishes parameters within which staging organizations must conduct such debates. The parameters address: (1) the types of organizations that may stage such debates, (2) the structure of debates, and (3) the criteria that debate staging organizations may use to select debate participants. With respect to participant selection criteria, 11 C.F.R. § 110.13(c) provides, in relevant part:

FECA defines contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); see also 2 U.S.C. § 441b(b)(2).

FECA defines expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); see also 2 U.S.C. § 441b(b)(2).

The presidential candidates of the major parties who accept public funds cannot accept contributions from any source, except in limited circumstances that are not raised herem. 26 U.S.C. § 9003(b)(2); see also 11 C.F.R. § 9012.2(a).

The exemption also requires that such debates meet the requirements of 11 C.F.R. § 114 4, which permits certain nonprofit corporations to stage candidate debates and other corporations and labor organizations to donate funds to organizations that are staging such debates. 11 C.F.R. §§ 114 4(f)(1) and (3). This section also requires the debates to be staged in accordance with the standards in 11 C F R. § 110 13. Id.

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

11 C.F.R. § 110.13. When promulgating this regulation, the Commission explained its purpose and operation as follows:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

... Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rules, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But, in situations where, for example, candidates must satisfy three of five objective criteria, nomination by a major party may be one of the criteria. This is a change from the Explanation and Justification for the previous rules, which had expressly allowed staging organizations to restrict general election debates to major party candidates. See Explanation and Justification, 44 FR 76735 (December 27, 1979). In contrast, the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party.

60 Fed. Reg. 64,260, 64,262 (Dec. 14, 1995).

Thus, if an appropriate corporation staged a debate among candidates for federal office and that debate was staged in accordance with all of the requirements of 11 C.F.R. § 110.13, then the costs incurred by the sponsoring corporation would be exempt from the definition of contribution pursuant to the operation of 11 C.F.R. § 100.7(b)(21). See also 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(1). Similarly, other corporations legally could provide funds to the sponsoring corporation to defray expenses incurred in staging the debate pursuant to the operation of 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(3). On the other hand, if a corporation staged a debate that was not in accordance with 11 C.F.R. § 110.13, then staging the debate would not be an activity "specifically permitted" by 11 C.F.R. § 100.7(b), but instead would constitute a contribution to any participating candidate under the Commission's regulations. See 11 C.F.R. § 100.7(a)(1)(iii)(A) (noting "unless specifically exempted" anything of value provided to the candidate constitutes a contribution). The participating candidates would be required to report receipt of the in-kind contribution as both a contribution and an expenditure pursuant to 11 C.F.R. § 104.13(a)(1) and (2). See 2 U.S.C. § 434(b)(2)(C) and (4).

#### B. Commission on Presidential Debates Selection Criteria

CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation designed to organize, manage, produce, publicize and support debates for the candidates for President of the United States. Prior to the 1992 campaign, CPD sponsored six debates, five between candidates for President, and one between candidates for Vice President. In the 1996 campaign, CPD sponsored two Presidential debates and one Vice Presidential debate. Only the candidates of the Democratic and Republican parties were invited to participate in the 1996 debates. CPD produced written candidate selection criteria for the 1996 general election debate participation. Relying on these criteria and the recommendation of an advisory committee consisting of a broad array of independent professionals and experts, the CPD determined that only the Democratic and Republican candidates had a "realistic chance of winning" the 1996 election.

The introduction to the candidate selection criteria explains, in pertinent part:

In light of the large number of declared candidates in any given presidential election, [CPD] has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation

to the respective nominees of the two major parties to participate in [CPD's] 1996 debates.

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In order to further the educational purposes of its debates, [CPD] has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a [CPD]-sponsored debate. Rather, [CPD] will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates.

February 6, 1998 General Counsel's Report ("G.C. Report") at Attachment 4, at 57.

Thus, CPD identified its objective of determining which candidates have a realistic chance of being elected the next President, and it specified three primary criteria for determining which "nonmajor" party candidates to invite to participate in its debates. CPD further enumerated specific factors under each of the three primary criteria that it would consider in reaching its conclusion.

For its first criterion, "evidence of national organization," CPD explained that this criterion "encompasses objective considerations pertaining to [Constitutional] eligibility requirements...[and] also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success." Id. The factors to be considered include:

- a. Satisfaction of the eligibility requirements for Article II, Section I of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.

- c. Organization in a majority of congressional districts in those states.
- d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsement by federal and state officeholders.

Id.

CPD's second criterion, "signs of national newsworthiness and competitiveness," focuses "both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time [CPD] makes its invitation decisions." *Id.* Five factors are listed as examples of "signs of national newsworthiness and competitiveness":

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

ld. at 58.

Finally, CPD's third selection criterion states that the factors to be considered as "indicators of national public enthusiasm" are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The listed factors include:

a. The findings of significant public opinion polls conducted by national polling and news organizations.

b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Id.

### C. Discussion

After a thorough and careful examination of the factual record, the undersigned commissioners unanimously concluded the Commission on Presidential Debates used "pre-established objective criteria" to determine who may participate in the 1996 Presidential and Vice-Presidential debates. 11 C.F.R. §110.13. As a result, CPD did not make, and the candidate committees did not receive, a corporate contribution.

The CPD was set up and structured so that the individuals who made the ultimate decision on eligibility for the 1996 debates relied upon the independent, professional judgment of a broad array of experts. The CPD used multifaceted selection criteria that included: (1) evidence of a national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. We studied these criteria carefully and concluded that they are objective. Moreover, we could find no indication or evidence in the factual record to conclude that the criteria "were designed to result in the selection of certain pre-chosen participants." Explanation and Justification of 11 C.F.R. §110.13(c), 60 Fed. Reg. at 64262.

The CPD debate criteria contain exactly the sort of structure and objectivity the Commission had in mind when it approved the debate regulations in 1995. Through those regulations, the Commission sought to reduce a debate sponsor's use of its own personal opinions in selecting candidates. It was essential, in the Commission's view, that this selection process be neutral. It is consistent with the 1995 regulations for a debate sponsor to consider whether a candidate might have a reasonable chance of winning through the use of outside professional judgment. Indeed, if anything, the use of a broad array of independent professionals and experts is a way of ensuring the decision makers are objective in assessing the "realistic chances" of a candidate.

Although not required to do so under the Commission's regulation, CPD reduced its candidate selection criteria to writing. See Explanation and Justification of 11 C.F.R. §110.13, 60 Fed. Reg. at 64262.

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The pool of experts used by CPD consisted of top level academics and other professionals experienced in evaluating and assessing political candidates. By basing its evaluation of candidates upon the judgment of these experts, CPD took an objective approach in determining candidate viability.<sup>6</sup>

Significantly, the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use. During the Commission's promulgation of §110.13, the Commission considered the staff's recommendation to specify certain ostensibly objective selection criteria in the regulations and to expressly preclude the use of "[p]olls or other assessments of a candidate's chances of winning the nomination or election." See Agenda Document #94-11 at 74 (February 8, 1994) and Explanation and Justification of 11 C.F.R. §110.13, 60 Fed. Reg. at 64262. The Commission unanimously rejected this approach. Id. Instead, the Commission decided the selection criteria choice is at the discretion of the staging organization and indicated that the use of outside professional judgment in considering candidate potential is permissible. Accordingly, the Commission cannot now tell the CPD that its employment of such an approach is unacceptable and a violation of law.

The Office of General Counsel, in effect, seemed to want to apply its own debate regulation proposal from several years ago in the instant matters. It argued the use of candidate assessments, such as CPD's "signs of newsworthiness and competitiveness," are "problematic" for many of the same reasons it argued in 1994. G.C. Report at 17. Specifically, the Office of General Counsel contended the CPD criteria contain "two levels of subjectivity: first, identifying the pool of sources involves numerous subjective judgments, and second, once the pool is identified, the subjective judgments of its members is considered." *Id.* at 18. The staff further insisted that there also is "reason to believe that the other selection criteria appear to be similarly insufficiently defined to comply with §110.13(c)'s objectivity requirement." *Id.* 

That one reference in CPD's materials states that the criterion for evidence of national organization "encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success", see G.C. Report at 11(emphasis added), is not dispositive. Indeed, the factors referred to appear to be objective on their face and not subjective:

a. Satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution of the United States.

b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.

c. Organization in a majority of congressional districts in those states.

d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

Id. at Attachment 4, at 57.

Under the staff's proposed regulation, a debate sponsor could not look at the latest poli results even though the rest of the nation could look at this as an indicator of a candidate's popularity. This made little sense to us.

The questions raised in the General Counsel's Report are questions which can be raised regarding any candidate assessment criterion. To ask these questions each and every time a candidate assessment criterion is used, however, would render the use of that criterion unworkable, contrary to the direction given by the Commission at the regulatory stage. Absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion. This approach is consistent with the Commission's Explanation and Justification which states "reasonableness is implied" when using objective criteria. Explanation and Justification of 11 C.F.R. §110.13(c), 60 Fed. Reg. at 64262. We are satisfied with the affidavits presented by the CPD that its "criteria were not designed to result in the selection of certain pre-chosen participants." Id. See G.C. Report at Attachment 4, at 121-126 (affidavit of professor Richard E. Neustadt); Attachment 4 at 43-56 (affidavit of Janet H. Brown). Significantly, we have been presented with no evidence in the factual record which threatens the veracity of these sworn affidavits.

The General Counsel's Report contains several other points which must be addressed. First, the Report's suggestion that CPD misapplied Mr. Perot's qualification for public funding reflects a misunderstanding of CPD's reasoning. See G.C. Report at 19-20. While qualification for public funding is significant, the CPB observed that as a practical matter Mr. Perot's hands would be tied since he could not contribute his own money. Thus, compared to 1992, his "realistic" chances of winning in 1996 were greatly reduced:

[In 1992], we concluded that his prospect of election was unlikely but not unrealistic. With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a federal subsidy, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

G.C. Report at Attachment 4, at 128 (Letter of Professor Richard E. Neustadt) (emphasis added). A limit on the amount of funds which can be spent by a candidate is certainly an objective factor which can be legitimately used by a sponsoring organization.

The General Counsel's Report also asserts the Democratic and Republican party nominees were issued "automatic" invitations to the debates as a result of their party nominations in violation of §110.13. See February 6, 1998 G.C. Report at 21-22. We find persuasive the specific denials by the CPD on this point. The CPD flatly denies it based its decision on this factor alone:

[I]n 1996, the CPD Board asked me to act as chairman of the advisory committee that applied the 1996 candidate selection criteria. The advisory committee convened on September 16, 1996 for the purpose of applying CPD's nonpartisan candidate selection criteria to more than 130 candidates running for the Presidency and Vice-Presidency in the 1996 general election campaign. Although, the candidate selection criteria do not require it to do so, the advisory committee independently applied the criteria to the Democratic and Republican party candidates. After reviewing and discussing the facts and circumstances of the 1996 general election campaign, it was the unanimous conclusion of the advisory committee that, as of September 16, 1996, only President Clinton and Senator Dole have a realistic chance in 1996 of being elected President, and only Vice President Gore and Congressman Kemp have a realistic chance of being elected Vice President.

G.C. Report at Attachment 4, at 124-125 (Affidavit of Professor Richard E. Neustadt) (emphasis added). See also id. at 53-54 (Affidavit of Janet H. Brown) ("After receipt of the data provided to the 1996 Advisory Committee and its own deliberation and discussion, the CPD Board unanimously accepted the 1996 Advisory Committee's recommendation that only President Clinton and Senator Dole be invited to participate in CPD's 1996 Presidential debate and only Vice President Gore and Congressman Kemp be invited to participate in CPD's 1996 vice presidential debate.") (emphasis added).

Additionally, we do not fully agree with the staff's conclusion that "automatic' invitations are in direct violation of 11 C.F.R. §110.13(c)." G.C. Report at 21. Section 110.13(c) provides, in pertinent part, that "[f]or general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." The phrase "whether to include" was intended to prevent a debate sponsor from excluding a candidate from a debate solely because the candidate was not a major party nominee. For example, a debate sponsor could not use the following as its "objective" criterion: "Only major party candidates are eligible to participate in the debate." The regulation's purpose was not to prevent a debate sponsor from issuing debate invitations to major party nominees.

The Explanation and Justification of §110.13(c) confirms this understanding of the regulation: "Under the new rules, nomination by a particular party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate." Explanation and Justification of 11 C.F.R. §110.13(c), 60 Fed. Reg. at 64262 (emphasis added). Indeed, the entire paragraph explaining this new regulatory language focuses on the fact that "the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating

simply because they have not been nominated by a major party." Id. Conversely, no mention is made in the Explanation and Justification that the new rules were somehow intended to prevent the issuance of invitations to major party nominees. We believe it is consistent with the purpose of the regulation for the CPD to issue an invitation to the major party candidates in view of the "historical prominence" of, and "sustained voter interest" in, the Republican and Democratic parties. G.C. Report at Attachment 4, at 57.

Finally, the General Counsel's Report suggests the Clinton/Gore Committee and the Dole/Kemp Committee expressed an interest to either include or exclude Mr. Perot and that, as a result, the two candidate committees somehow tainted the debate selection process. G.C. Report at 20-21. Absent specific evidence of a controlling role in excluding Mr. Perot, the fact the Committees may have discussed the effect of Mr. Perot's participation on their campaigns is without legal consequence. There certainly is no credible evidence to suggest the CPD acted upon the instructions of the two campaigns to exclude Mr. Perot. To the contrary, it appears one of the campaigns wanted to include Mr. Perot in the debate. See G.C. Report at Attachment 6, at 7 ("since the start of the general election, the [Clinton/Gore] Committee fully supported the wishes of Ross Perot to be included in the CPD-sponsored presidential debates and had hoped that the CPD would make a determination to include him.") (response of Clinton/Gore '96). In fact, CPD's ultimate decision to exclude Mr. Perot (and others) only corroborates the absence of any plot to equally benefit the Republican and Democratic nominees to the exclusion of all others.

### III. STATUS AS A POLITICAL COMMITTEE

The FECA defines "political committee" as, in part: "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the FECA and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d) (requiring political committees to register with the Commission); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a) (requiring political committees to file specified reports with the Commission). Since CPD did not make a contribution to or an expenditure on behalf of the Committees, it was not a political committee within the meaning of 2 U.S.C. § 431(4): "Accordingly, CPD was not required to register and report with the Commission.

### IV. CONCLUSION

For all the reasons set forth above, the Commission did not approve the General Counsel's recommendations with regard to alleged violations of the FECA by the Commission on Presidential Debates, Clinton/Gore '96 General Committee and the Dole/Kemp '96 Committee and their treasurers.

4/10/97 Date

4/6/98

Date

4/6/98 Date

Port

Joan D. Aikens Chairman

Scott E. Thomas Vice Chairman

Lee Ann Elliott Commissioner

Danny L. McDonald

Commissioner

John Warren McGarry

Commissioner

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### FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Stacey L. McGraw, Esq. Ross, Dixon & Bell, LLP 2001 K Street, NW Washington, DC 20006-1040

AUG 2 1 2002

RE: MUR 5207

Dear Ms. McGraw:

On May 29, 2001, the Federal Election Commission notified your clients, the Commission on Presidential Debates, and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, as Co-Chairmen, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On August 8, 2002, the Commission found, on the basis of the information in the complaint, and information provided in your response, that there is no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a). Accordingly, the Commission closed the file in this matter.

Because of restrictions recently placed on the Commission with respect to its making public the investigative files in closed enforcement cases, the public record in this matter will consist of a redacted version of the First General Counsel's Report and Certification of the Commission's vote. See AFL-CIO v. FEC, 177 F. Supp. 2d 48 (D.D.C. 2001); appeal docketed, No. 02-5069 (D.C. Cir. February 28, 2002).

Stacey L. McGraw, Esq. Page 2

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lawrence H. Norton General Counsel

BY:

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Gregory R. Baker

Acting Associate General Counsel

Enclosure

First General Counsel's Report

	1 2		FEDERAL ELECTION COMMISSION 999 E Street, N.W.	AUG 0 2 2002	
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	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22		FIRST GENERAL COUNSEL'S REPORT	SENSITIVE	
		MUR 5207  Date Complaint Filed: May 15, 2001  Date of Notification: May 29, 2001  Date Activated: September 11, 2001  Staff Member: Delbert K. Rigsby			
				27, 2005	
		COMPLAINANT:	Max Englérius	-	
		RESPONDENTS:	Commission on Presidential Debates Paul G. Kirk, Jr., Co-Chairman of the Co Presidential Debates Frank J. Fahrenkopf. Jr., Co-Chairman o on Presidential Debates Democratic National Committee and An	f the Commission	
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	27 28 29 30 31 32 33 34 35 36 37 38	RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 431(4) 2 U.S.C. § 431(8)(A)(i) 2 U.S.C. § 431(9)(A)(i) 2 U.S.C. § 433 2 U.S.C. § 434 2 U.S.C. § 441a(f) 2 U.S.C. § 441b(a) 2 U.S.C. § 441b(b)(2) 11 C.F.R. § 100.7(b)(21) 11 C.F.R. § 102.1(d) 11 C.F.R. § 104.1(a) 11 C.F.R. § 110.13	SECEIVED	
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On October 27, 2000, Max Englerius filed a complaint with the Commission. The Office of General Counsel determined that the complaint was improper because it was not sworn and notarized. Thereafter. Mr. Englerius refiled the complaint on May 15, 2001 which was sworn and notarized and this Office sent notifications to the respondents.

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11 C.F.R. § 114.1(a)(2)(x) 11 C.F.R. § 114.2(b) 11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

### I. GENERATION OF MATTER

This matter arose from a complaint filed with the Federal Election Commission (the "Commission") by Max Englerius (the "Complainant"). The complaint alleges that the Commission on Presidential Debates (the "CPD") was partisan in selecting candidates to participate in the Presidential debates in 2000. The complaint also alleges that the Democratic and Republican parties worked to arbitrarily restrict the participation in the Presidential debates to the candidates of the two parties. All of the respondents have responded to the complaint.<sup>2</sup>

### II. FACTUAL AND LEGAL BACKGROUND

### A. Law

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The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections.

2 U.S.C. § 441b(a); see also 11 C.F.R. § 114.2(b). The Act defines a contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any

person for the purpose of influencing any election for Federal office." 2 U.S C. § 431(8)(A)(i);

The Reform Party, the Natural Law Party and Mary Wohlford and Bill Wohlford, respectively, filed similar complaints against the CPD, the Democratic National Committee (DNC) and the Republican National Committee (RNC) See MURs 4987, 5004 and 5021. In those MURs, the Commission found no reason to believe that the CPD, the DNC and RNC violated the Act. The Complainants in MURs 4987 and 5004 appealed the Commission's decisions to the federal courts and those courts upheld the Commission's decisions. See Buchanan v. Federal Election Commission, 112 F. Supp. 2d 58 (D.D.C. 2000) and Vatural Law Party of the United States v. Federal Election Commission, 111 F. Supp. 2d 33 (D.D.C. 2000).

see also 2 U.S.C. § 441b(b)(2). A contribution is also defined in the Commission's regulations

- at 11 C.F.R. § 100 7(a)(1). "Anything of value" is defined to include all in-kind contributions.
- 3 11 C.F.R. § 100.7(a)(1)(iii)(A). The Act defines an expenditure to include "any purchase,
- 4 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
- 5 person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i);
- 6 see also 2 U.S.C. § 441b(b)(2).

The Commission's regulations at 11 C.F.R. § 100.7(b)(21) specifically exempt expenditures made for the purpose of staging candidate debates from the definition of contribution provided that the debates meet the requirements of 11 C.F.R. §§ 110.13 and 114.4(f). Non-profit organizations described in 26 U.S.C. §§ 501(c)(3) or 501(c)(4) that do not endorse, support, or oppose political candidates or political parties may stage candidate debates. 11 C.F.R. § 110.13(a)(1). The debates must include at least two candidates, and not be structured to promote or advance one candidate over another. 11 C.F.R. §§ 110.13(b)(1) and (2).

Organizations that stage presidential debates must use pre-established objective criteria to determine which candidates may participate in the debate. 11 C.F.R. § 110.13(c). With respect to general election debates, staging organizations shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. *Id*.

If a corporation staged a debate in accordance with 11 C.F.R § 100.13, the expenditures incurred by that sponsoring corporation would be exempt from the definition of contribution.

See 11 C.F.R. §§ 100.7(b)(21), 114.1(a)(2)(x) and 114.4(f)(1). As long as the sponsoring corporation complied with 11 C.F.R. § 110.13, other corporations may provide funds to the

sponsoring corporation to defray expenses incurred in staging the debate without being in violation of the Act. 11 C.F.R. § 114.4(f)(3).

The Act defines the term "political committee" to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the Act and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a).

### B. CPD's Criteria for Selecting Candidates to Participate in the 2000 General Election Debate

The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States." See CPD response (5/22/00) at 5. The Co-Chairmen of the CPD are Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr. The CPD sponsored two presidential debates during the 1988 general election, three presidential debates and one vice presidential debate in 1992, and two presidential debates and one vice presidential debate during the 2000 general election. The CPD accepts donations from corporations and other organizations fund these debates

In response to this complaint, the CPD submitted a letter to this Office stating the response that it made to MUR 4987 on May 2, 2000 would serve as its response in this matter.

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On January 6, 2000, the CPD announced its candidate selection criteria for the 2000 general election debates. Id. at 2. It stated, "the purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency." Id. The criteria are: (1) evidence of the candidate's constitutional eligibility to serve as President of the United States pursuant to Article II, Section 1 of the United States Constitution; (2) evidence of ballot access, such as the candidate appearing on a sufficient number of state ballots to have at least a mathematical chance of securing an Electoral College majority; and (3) indicators of electoral support by having a level of support of at least fifteen percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination of eligibility. Id. at 9, 10. A candidate must meet all three criteria to participate in the debate. The CPD also stated that it would determine participation in the first scheduled debate after Labor Day 2000. Id. at 75. Furthermore, the CPD also stated that it would extend invitations to participate in the vice presidential debate to the running mates of the presidential candidates qualifying for participation in the CPD's first presidential debate, and invitations to participate in the second and third debates would be based upon the same criteria prior to each debate. Id.

Those five polling organizations are the ABC News/Washington Post; CBS News/New York Times, NBC News/Wall Street Journal, CNN/US 4 Today/Gallup, and Fox News/Opinion Dynamics The CPD also retained I rank Newport, Editor-in-Chief of the Gallup Poll, as a consultant in implementing the 2000 candidate selection criteria. Id at 9, 10

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### C. Complaint

The complainant alleges that the Commission failed to ensure "free, open and fair elections in the 2000 Presidential election by establishing or allowing to be established, a privately held and completely partisan 'Presidential Debate Commission,' a [principal] aim of which was to keep other legitimate candidates from participating." Complaint at 1. The complaint also alleges that operatives of the Democratic and Republican parties monopolized the debates by "arranging to arbitrarily restrict participation in the Presidential debates to only candidates of their parties." *Id.* Furthermore, the complainant argues that other Presidential candidates were deprived of the right to campaign at those public forums and the public was deprived of the right to showcase and solicit votes for the candidates of their choice. *Id.* 

### D. Responses

### 1. Responses from the CPD to the Complaint

In response to the complaint, the CPD argues that no CPD Board member is an officer of either the Democratic National Committee or the Republican National Committee, and the CPD receives no funding from the government or any political party. CPD Response (5/22/00) at 5. The CPD also argues that any references to its founding as a bipartisan effort was an effort to ensure that it was not controlled by any one party, not an effort by the two major parties to control CPD's operations or to exclude non-major party candidates in CPD-sponsored debates.

In regard to its candidate selection criteria, the CPD argues that the purpose of the candidate selection criteria is to identify those candidates, regardless of party, who realistically are considered to be among the principal rivals for the Presidency. *Id.* at 2. Moreover, in regard

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to the third criterion, the CPD states that it sets forth a bright line standard with respect to

2 electoral support, which is at least 15% of the national electorate as determined by the average

3 results of five selected national public opinion polling organizations at the time of the CPD's

determination of eligibility before each debate. Id at 3. The CPD argues that in promulgating

the regulation, 11 C.F.R. § 110.13, the Commission permits the staging organization to

6 determine the objective criteria. *Id*.

With respect to the issue of electoral support and polling, the CPD argues that the Commission has ruled in a previous matter regarding its 1996 candidate selection criteria that it is appropriate for the criteria to include a measure of candidate potential or electoral support and to use polls to measure that support. Id. at 3. Moreover, the CPD states that the five polling organizations that it planned to employ are well-known, well-regarded, and will poll frequently throughout the 2000 election. Id. at 16.6 The CPD also argues that because public opinion shifts, it will use the most recent poll data available before the debates. Id. In regard to any methodological differences among the polls, the CPD states that taking the average of five polls may reduce the random error that could come from using only one source, and averaging does not invalidate the results. Id. Furthermore, the CPD, citing the declaration of Dorothy Ridings, a CPD Board member, argues that requiring a level of electoral support of 15% of the national electorate is reasonable because the "fifteen percent threshold best balanced the goal of being

The CPD is referring to the Commission's Statement of Reasons dismissing MURs 4451 and 4473 in which the Natural Law Party and Perot '96. Inc respectively, challenged the CPD's 1996 candidate selection criteria for participation in the debates

<sup>&</sup>quot;While this complaint was filed in May 2001 after the presidential debates, the CPD's response to the complaint was the same response that it submitted in May 2000 to the complaints referenced as MURs 4987, 5004 and 5021. Thus, the CDP's arguments cited here and below are in the present tense instead of the past tense.

- sufficiently inclusive to invite those candidates considered to be among the leading candidates,
- 2 without being so inclusive that invitations would be extended to candidates with only very
- 3 modest levels of support." *Id.* at 14.

### 2. Response from the DNC to the Complaint

The DNC urges the Commission to dismiss the complaint against them and find no reason to believe that the DNC has violated the Act or Commission regulations. DNC Response at 2. The DNC argues that it is independent of the CPD and that Mr. Paul Kirk, CPD Co-Chairman, who also served as DNC Chairman from 1985-1989, has held no office and played no role in the DNC since 1989. *Id.* The DNC also states that no DNC member, officer or employee sits on the Board of the CPD, and the DNC does not now play, nor has it ever played, any role in determining CPD's criteria for candidate selection for the debates. *Id.* 

### 3. Response from the RNC to the Complaint

The RNC requests that the Commission find no reason to believe that it violated the Act, dismiss the complaint and close the file. RNC Response at 2. The RNC acknowledges that Mr. Frank Fahrenkopf, Co-Chairman of the CPD, was Chairman of the RNC during the founding of the CPD, but the CPD was never an official or approved organization of the RNC and does not receive any funding or other support from the RNC. *Id.* at 1. Finally, the RNC states neither its chairman during the 2000 election nor its current chairman have ever sat on the CDP's Board, and that the RNC neither organized nor controls the CPD. *Id.* 

The CPD also notes that John Anderson achieved this level of electoral support prior to the first presidential debate in 1980 and was invited by the League of Women Voters to participate in that debate Furthermore, the CPD states that other presidential candidates, such as George Wallace in 1968 and Ross Perot in 1992, had high levels of support Id at 14

### III. ANALYSIS

Based upon the available evidence, it appears that CPD has complied with the
requirements of section 110.13 of the Commission's regulations governing sponsorship of
candidate debates. While the complainant argues that the CPD is a partisan organization, he has
provided no evidence that the CPD is controlled by the DNC or the RNC. There is no evidence
that any officer or member of the DNC or the RNC is involved in the operation of the CPD.
Moreover, there does not appear to be any evidence that the DNC and the RNC had input into the
development of the CPD's candidate selection criteria for the 2000 presidential election cycle.
Thus, it appears that the CPD satisfies the requirement of a staging organization that it does not
endorse, support or oppose political candidates or political parties. 11 C.F.R. § 110.13(a).

Furthermore, CPD's criteria for participation in the candidate debates appear to be preestablished, objective criteria as required by 11 C.F.R. § 110.13(c), and not designed to result in
the selection of certain pre-chosen participants. The CPD's criteria for determining who may
participate in the 2000 general election presidential debates consist of constitutional eligibility,
appearance on sufficient state ballots to achieve an Electoral College majority, and electoral
support of 15% of the national electorate based upon an average of the most recent polls of five
national public opinion polling organizations at the time of determination of eligibility.

The Commission has accorded broad discretion to debate sponsors in determining the criteria for participant selection. In promulgating 11 C.F.R. § 110.13(c), the Commission stated

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization ...

Staging organizations must be able to show that their objective criteria

MUR 5207 First General Counsel's Report

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were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes that there are too many candidates to conduct a meaningful debate.

60 Fed. Reg. 64,262 (December 14, 1995).

The CPD's candidate selection criteria have been challenged in the past. In MURs 4451 and 4473, the Natural Law Party and Perot '96, Inc. filed complaints with the Commission against the CPD regarding its 1996 candidate selection criteria. The Commission found no reason to believe that the CPD violated the law by sponsoring the presidential debates or by failing to register and report as a political committee. The Commission noted, "the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use." Statement of Reasons in MURs 4451 and 4473 at 8 (April 6, 1998). With respect to polling and electoral support, the Commission noted in MURs 4451 and 4473 that it declined to preclude the use of polling or "other assessments of a candidate's chances of winning the nomination or election" when promulgating 11 C.F.R. § 110.13. Furthermore, the Commission stated that questions can be raised regarding any candidate assessment criterion and "absent specific evidence that a candidate assessment criterion was 'fixed' or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion." Id. at 9. Finally, in MURs 4451 and 4473, the Commission referred to the Explanation and Justification for 11 C.F.R. § 110 13 which states reasonableness is implied when using objective criteria. Id.

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it used for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate

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selection criteria were: (1) evidence of national organization; (2) signs of national

2 newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern.

3 With respect to signs of national newsworthiness and competitiveness, the CPD listed factors,

4 such as the professional opinions of Washington bureau chiefs of major newspapers, news

5 magazines and broadcast networks; the opinions of professional campaign managers and

6 pollsters not employed by the candidates; the opinions of representative political scientists

7 specializing in electoral politics; a comparison of the level of coverage on front pages of

newspapers and exposure on network telecasts; and published views of prominent political

9 commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional

eligibility, ballot access, and a level of electoral support of 15% of the national electorate based

upon the average of polls conducted by five major polling organizations, make it easier to

determine which candidates will qualify, and appear to be more objective than the 1996

candidate selection criteria. Given this, and the fact that the Commission's dismissed similar

challenges to CDP's selection criteria for the 2000 Presidential election in MURs 4987, 5004 and

15 5021 that have subsequently been upheld in federal court, it appears that the CPD's candidate

selection criteria for participation in the 2000 general election debates are in accordance with the

17 requirements of 11 C.F.R. § 110.13.8

Based upon the available evidence, it appears that the CPD satisfies the requirements of

19 11 C.F.R. § 110.13 to stage the debates. Because the CPD meets the requirements of 11 C.F R.

In Buchanan v FEC, 112 F Supp 2d 58 (D D C 2000), Patrick Buchanan appealed the Commission's decision dismissing a complaint (MUR 4987) challenging the CPD's nonpartisan status, the CPD's selection criteria and his exclusion from the 2000 Presidential debates. The court granted the Commission's motion for summary judgment in that case.

§ 110.13, its expenditures are specifically exempted under 11 C.F.R. § 110.7(b)(21) from being considered contributions and are not subject to the Act. Additionally, because the CPD meets the requirements of 11 C.F.R. § 110.13, the CPD is not considered a political committee under 2 U.S.C. § 431(4) nor subject to the registration and reporting requirements of 2 U.S.C. § 433 and 2 U.S.C. § 434. Finally, as long as the CPD complies with 11 C.F.R. § 110.13, funds provided by corporations to the CPD to be used to defray expenses to stage Presidential debates

are not prohibited contributions, but permissible under 11 C.F.R. § 114.4(f)(3).

For the foregoing reasons, the Office of General Counsel recommends that the Commission find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 441a(f) by accepting prohibited contributions from corporations or making contributions to the Democratic National Committee or the Republican National Committee, 2 U.S.C. § 433 by failing to register as a political committee, or 2 U.S.C. § 434 by failing to report contributions.

Furthermore, the Office of General Counsel recommends that the Commission find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates. The Office of General Counsel also recommends that the Commission find no reason to believe that the Republican National Committee and Robert M Duncan, as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the

- 1 Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from
- 2 the Commission on Presidential Debates.

### IV. RECOMMENDATIONS

- Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a);
  - 2. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a);
  - 3. Find no reason to believe that the Republican National Committee and Robert M.-Duncan, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a);
  - 4. Approve the appropriate letters; and
  - 5. Close the file.

8/2/02

Date

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# TELEVISED PRESIDENTIAL DEBATES AND PUBLIC POLICY

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### DEBATE FORMATS: A NEGOTIATION

[I]t all depends on what the candidates want. If the candidates wanted to have it in the middle of the Pacific Ocean on an aircraft carrier, with the Mormon Tabernacle Choir humming in the background, if they really wanted it, they were going to have it. 1

The image merchants (more precisely, influential newspaper editors in the role of candidate advisers) were on the political scene when candidates for the U. S. Senate, Abraham Lincoln and Stephen A. Douglas, prepared for a series of debates in Illinois.<sup>2</sup> A major issue confronting the nation was slavery. The country was in severe inner turmoil. Information was slow to reach the public, and when it did it was usually altered somewhat and secondhand. The 1857 Supreme Court decision in *Dred Scott v. Sanford*<sup>3</sup> led Lincoln in the debates to believe that preventing slavery in the territories by any governmental action would be unconstitutional. Douglas responded that "the people have the lawful means to introduce it or exclude it as they please."4 The Freeport exchange between Lincoln and Douglas, and the other six debates were witnessed by relatively few voters (about 15,000 at each site except the town of Jonesboro, in which the debate attracted only 1,500). Although they were not presidential debates, it was the first time in our history that opposing candidates went before the public to debate.

Lincoln suggested that they debate and Douglas accepted. They agreed on a set of ground rules: there would be seven 3-hour debates

CHAPTER 3 IL

(between August 21 and October 15, 1858)<sup>3</sup>, each would take place in different Congressional districts, the speaking order was to be alternated, I hour for the opening speaker, 1½ hours for the opponent, and the opening speaker took the remaining 30 minutes to close the debate Because Lincoln made the challenge, Douglas had the advandebate Because Losing four of the seven debates. These arrangements were agreed upon in an exchange of two simple letters between the Congressional candidates.

In today's negotiations for political debates, simple letters have been replaced by complex, extended conferences between candidates, their staffs of experts, and a third group, usually the sponsor of the proposed debates. Broadcasters are inevitably present, either in the negotiation meetings, or are consulted between the meetings.

The debates between Lincoln and Douglas were subsequently reported by the press with comments and editorials on the substance of the encounters, not on the ground rules Debates in the television age have been subjected to investigations and discussions of issues, images, candidates' backgrounds and performances, staff personalities, sponsors' motives, electronic and press coverage, and more. Although the Lincoln-Douglas debates differed from the modern debates in several distinct aspects, including both the office sought and the method of presentation, they have been held up as the standard for comparison of subsequent debates b

During the election campaigns of 1960, 1976, 1980, and 1984, Americans watched presidential candidates in joint appearances labeled "debates." The formats of these appearances resembled those of classical debates, but in most features they were not debates at all. If the democratic process is to be well served in the future by such televised meetings of presidential candidates, it behooves us to understand what forces are at work in organizing them and for what benefits Two facts are fundamental to this understanding

The first fact is that the candidates are not interested in educating the public or in arriving at truth, but in winning the election. The second is that the candidates want to, and ultimately do, control most of what they do in campaigns. The various sepects of a political campaign, its strategies and tactics, are designed to gain the office sought. The rationale is simple: More control over events increases the probabilities of impressing the electorate, gaining advantages over the opponent, and winning the election

Candidates accept debate invitations when they perceive it is to their advantage to do so. Once involved, candidates, through their representatives, seek control of the formal—the ground rules by which the appearances are conducted. In the process of determining format

elements candidates have had ultimate control. The television networks or the sponsoring organizations may set up the rules, but the candidates may veto any of them by refusing to appear. It is the format that determines how well the candidates can protect their weaknesses and exploit their strengths.

Although most of the published studies of televised debates have concluded that, on the whole, the debates were helpful to American voters, several criticisms have been advanced <sup>8</sup> Political pundits, scholars, and other critics have argued that format (in the broadest sense), more than any other element was responsible for the damaging aspects of the telecasts to one or other of the candidates. Kennedy looked better than Nixon in the 1960 debates. It was suggested then that the format, in part, allowed the appearance of the candidate to become more important than the substance of his statements. Ford's Eastern European gaffe (1976)<sup>9</sup> and Carter's revelation that he consulted with Amy (1980) are two more results of faulty format design Even the most cursory examination of postdebate media reports in the 4 campaign years displays a variety of criticism on how the debates were presented (see chap. 4).

Modern debating practice can be traced back to early Greek notions about public communication. Greek philosophers maintained that public argumentation required a structure to make it useful to society. The debate format was one structure that emerged. A fundamental assumption behind debates is that true arguments can always be presented more persuasively than false arguments if the situation in which the arguments are presented is arranged so that all participants have equal opportunity. Therefore, if two equally matched speakers are given equal amounts of time to present opposing arguments on an issue, an audience should be able to separate truth from falsehood and to reach a correct conclusion about the issue. It was believed by the Athenians that debates and the formats that contain them could provide an important tool for decision making by the public.

Persistent among the several criticisms of the presidential "debates" has been the lack of adherence to classical debate format, although some critics were willing to accept modern adaptations. One important critic, J J. Auer, isolated elements of a specifically American debate tradition. He suggested that "a debate is (I) a confrontation, (2) in equal and adequate time, (3) of matched contestants, (4) on a stated proposition, (5) to gain an audience decision." Applying these criteria to the 1960 telecasts, Auer found that only one fit, that of matched contestants. He labeled the Kennedy–Nixon encounters "The Counterfeit Debates" because they failed to satisfy genuine debate criteria—a criticism that also applies to the subsequent meetings

"genuine" debate advances ideals inherent in democratic theory, that the electorate is best served by clear, concise, and thoughtful discussions of issues, and that the political process of choosing our leaders is Underlying criticism such as Auer's is the sincere belief that only enhanced by the traditional debate structure Most critics are realistic about the presidential debate process and its format. In analyzing the panelists' questions and the responses to Milic, 11 suggested that it is "naive today to suppose that there is any them by Carter and Ford in the 1976 encounters, another critic, Louis chance of returning to the rhetorical tradition of the nineteenth century." He argued for minor changes and concluded that "the disappointment with the format, the tinkering with the form, length, and subject matter of the questions, are all in a sense irrelevant . . . [since politicians have learned] to answer any form of question with any degree of accuracy." A political scientist, Nelson Polsby, assessed the 1960 and 1976 debates as "notable for their intellectual bareness" and said that they "suggest the possibility that debates are most likely to occur when there is the least to debate about."12

Despite these criticisms and appeals for change in format, the basic design has varied only slightly among the 4 debate years. Even after Bitzer and Rueter recounted the flaws of the Carter-Ford format, they included among four suggested formats, only one (a Lincoln-Douglas type) that closely fits the American debate tradition. 13

ducted: "the so-called great debates are in fact based upon great myths" His "myths" are that presidential debates are great debates, candidecisions; and candidates will regularly volunteer to debate. Auer concluded that "it is difficult to find an objective assessment of debate with scientific studies on the impact of debates on voting decisions 13 . tend to judge by seeing how well their Auer 14 continued to be irked by how presidential debates are condates debate in order to inform the electorate; debates affect voters' prior opinions held up, and thus their innate resistance to change is a impact upon voting behavior." Yet, the academic literature is filled filtering factor." Although not specifically stated, one assumes that debates includes the assumption that the traditional debate format would affect voting behavior. This would be in keeping with his final essential debate element—"to gaın an audıence decısion " Because we have not seen the traditional debate format in presidential debates, part of the rationale underpinning Auer's criticisms of presidential that assumption remains untested. He argued that "voters

Upon the advice of their staffs, candidates have been unwilling to

ber of Reagan's 1980 Debate Task Force, summed up the position participate in a debate with a traditional format. Myles Martel, a memheld by debate advisers. H. T. OPRATE FORMATS.

It would be no exaggeration to compare the 1980 presidential debate process with an advanced game of chess Nearly every move regarding the decisions to debate, formats, strategies and tactics, and the execu-One mismove—one untoward statement or look—and the election could have tion of the debate themselves, was fraught with political implications

As a fervent advocate of political debates, I left this experience more convinced than ever that the candidates should retain control of the process, particularly the decision to debate, scheduling and format design To make presidential debates mandatory and to make a neutral third party mainly responsible for their preparation raises to great a risk that, intentionally or not, one candidate could become favored over the other. (italics added)16 The unsatisfactory form of the debates is due to candidates and their staffs, who ultimately decide on the format and, along with the representatives from television networks and sponsoring organizations, bring about what may be termed a negotiated format.

## THE NEGOTIATION PROCESS

Because presidential candidates are not required to debate, their actage over the opponent. Candidates want to get elected. Protestations ceptance of and subsequent participation in televised debates are matters for negotiation. The question whether to debate depends on the candidates' perception of their self-interest, that is, getting an advanto the contrary notwithstanding, they are interested in obtaining votes, not in educating the electorate. If a potential course of action is perceived as advantageous, it may be accepted. The test is always "Will this help us win?" It is this concern that dominates all discussions of alternative strategies and action.

Because the format is always a result of political decision making, it is difficult to conceive of a genuine debate replacing the innocuous question-and-answer programs Politicians are more accustomed to familiar format with predictable audience response rather than nsk anything unknown A review of the negotiations for the 4 debate the press conference format. Candidates are fearful about their ability to perform in a traditional debate, and they prefer to depend on

Location and Time	Candidates	Moderator* and Panelists	Format
Sept 26, 1960 WBBM-TV, CBS Chicago, IL 9:30-10:30 pm. EDST	John F Kennedy Richard M Nixon	Howard K Smith*, CBS Stuart Novins, CBS Sander Vanocur, NBC Charles Warren, MBS Robert Fleming, ABC	Opening statements (8 min ) Alternating questions to candidates on domestic issues Answers from candidates followed by rebuttal comments Closing statements (3 min )
Oct. 7, 1960 WRC-TV, NBC Washington, DC 7 30-8 30 pm EDST	John F Kennedy Richard M. Nixon	Frank McGee*, NBC Paul Nivin, CBS Alvin Spivak, UPI Hal Levy, <i>Newsday</i> Edward P Morgan, ABC	No opening or closing statements, end determined by clock Alternating questions to candidates on any subject Answers from candidates (2½ min ) Rebuttal comments from opponent (1½ min )
Oct 13, 1960 Split-Screen Telecast ABC, Los Angeles (Nixon) ABC, Los Angeles (Panel) ABC, New York (Kennedy) 7 30-8 30 p m EDST	John F Kennedy Richard M Nixon	William Shadel*, ABC Douglass Cater, The Reporter Frank McGee, NBC Charles Von Fremd, CBS Roscoe Drummond, New York Herald Tribune	No opening or closing statements, end determined by clock Alternating questions to candidates on any subject Answers from candidates (2½ min) Rebuttal comments from opponent (1½ min)
Oct 21, 1960 ABC, New York 10 00-11 00 pm.	John F Kennedy Richard M. Nixon	Quincy Howe*, ABC Walter Cronkite, CBS Frank Singiser, MBS John Chancellor, NBC John Edwards, ABC	Opening statements (8 min ), closing statements (4½ min ) Alternating questions to candidates on any subject Answers from candidates (2½ min )

			Rebuttal comments from opponent (1½ min)
Sept, 23, 1976 Walnut St Theater Philadelphia, PA 9.30—11 00 p m EDT	Jimmy Carter Geraid R Ford	Edwin Newman*, NBC Frank Reynolds, ABC Elizabeth Drew, New Yorker James Gannon, Wall Street Journal	No opening statements, closing statements (3 min ) Alternating questions to candidates on domestic issues Answers from candidates (3 min ) Optional follow-up questions permitted, answers (2 min ) Rebuttal comments from opponent (2 min )
Oct 6, 1976 Palace of Fine Arts San Francisco, CA 9:30—11 00 pm EDT	Jimmy Carter Gerald R. Ford	Pauline Frederick*, NPR Richard Valeriani, NBC Henry Trewhitt, Baltsmore Sun Max Frankel, New York Times	No opening statements, closing statements (3 min ) Alternating questions to candidates on foreign affairs Answers from candidates (3 min ) Optional follow-up questions permitted; answers (2 min ) Rebuttal comments from opponent (2 min )
Oct 13, 1976 Alley Theatre Houston, TX 9 30-10 45 pm EDT	Robert Dole Walter F. Mondale	Jim Hoge*, Chicago Sun- Times Marilyn Berger, NBC Hal Bruno, Newsweek Walter Mears, AP	Opening statements (2 min ), closing statements (3 min ) Alternating questions (½ domestic, ½ foreign, ½ open) Both candidates answer the same questions (2½ min ) First candidate to answer a question has a rebuttal (1 min)

(continued)

Location and Time	Candidates	Moderator* and Panelists	Format
Oct 22, 1976 Phi Beta Kappa Hall Williamsburg, VA 9 30-11 00 p m EDT	Jimmy Carter Gerald R Ford	Barbara Walters*, ABC Joseph Kraft, columnist Jack Nelson Los Angeles Times Robert Maynard, Washington Post	No opening statements, closing statements (4 min.) Alternating questions to candidates on any subject Answers from candidates (2½ min) Follow-up questions permitted, answers (2 min.) Rebuttal comments (2 min)
Sept 21, 1980 Convention Center Baltimore, MD 10 00-11, 00 pm EDT	John B Anderson Ronald Reagan	Bill Moyers*, PBS Charles Corddry, Baltimore Sun Stephen Golden, New York Times Daniel Greenberg, columnist C Loomis, Fortune Lee May, Los Angeles Times Jane Bryant Quinn, Neusweek	No opening statements, closing statements (3 min ) Alternating questions to candidates on any subject Answers from candidates (2½ min ) Rebuttal comments from both candidates (75 sec.)
Oct 28, 1980 Public Music Hall Cleveland, OH 9 30-11 00 pm EDT	Jimmy Carter Ronald Reagan	Howard K Smith*, ABC Harry Ellis, Christian Science Monitor William Hilliard, Portland Oregonian Marvin Stone, US News & World Report Barbara Walters, ABC	No opening statements, closing statements (3 min ) Alternating questions on domestic and foreign policy (1st Half) Same questions to both, follow-up questions Answers from candidates, rebuttals (1 min) (2nd Half) Answers from candidates to same questions

			Two opportunities for rebuttal comments
Oct 7, 1984 Center for the Performing Arts Louisville, KY 9 00–10 30 p.m EDT	Walter F Mondale Ronald Reagan	Barbara Walters*, ABC Diane Sawyer, CBS Fred Barnes Baltimore Sun James Wilghart, Scripps-	No opening statements, closing statements (4 min ) Alternating questions to candidates on economic policy and domestic issues
		Howard	Follow-up questions permitted, answers (1 min) Rebuttal comments from opponent (1 min)
Oct. 11, 1984 Pennsylvania Hall Civic Center Philadelphia, PA 9 00-10 30 pm EDT	George Bush Geraldine Ferraro	Sander Vanocur*, ABC Robert Boyd, Philadelphia Inquirer Jack White, Time John Mashek, U S News & World Report Norma Charles, NBC	No opening statements, closing statements (4 min ) Alternating questions to candidates on any subject Answers from candidates (2½ min ) Follow-up questions permitted, answers (1 min )
Oct 21, 1984 Music Hall, Municipal Auditorium Kansas City, KA 8 00–9 30 pm EDT	Walter F Mondale Ronald Reagan	Edwin Newman*, PBS, King Features Morton Kondracke, New Republic Georgie Ann Geyer, Universal Press Syndicate Henry Trewhitt, Baltsnore Sun Marvin Kalb, NBC	No opening statements, closing statements (4 min.) Alternating questions to candidates on foreign policy and defense Answers from candidates (2½ min) Follow-up questions permitted, answers (1 min) Rebuttal comments from opponent (1 min)

## The 1960 Debates

In 1960 the television networks wanted to mount the first presidential televised debate in imitation of the Oregon presidential primary debate between Thomas Dewey and Harold Stassen in 1948. In that year, the candidates agreed to debate one issue—outlawing Communists as school teachers. That format provided for 20-minute opening attract little audience interest They also believed that no single issue Both Kennedy and Nixon rejected that format. They feared it would facing the nation was so important as to exclude all others The headto-head confrontation (especially, the rebuttals) might prompt one or the other to make a casual remark that would endanger our foreign statements by each candidate followed by rebuttals of 81/2 minutes relations.

ings between the candidates' representatives and the networks. Although the networks wanted a more direct confrontation than that in the format insisted on by the candidates, their main objective was to have the presidential candidates agree so that televised "debates" could be aired NBC head, Robert Samoff, conceded that the format "may not fulfill the traditional conception of a debate Yet I believe it Negotiations for the debates were conducted in a series of 12 meetis serving the public more effectively than the classical debating format might have done."17 His competitor at CBS, Dr. Frank Stanton, likewise supported their compromise with the candidates

too happy The networks preferred the more traditional format in dates and represented a compromise with which the networks were not which each candidate would question the other But we were eager to Nevertheless, the format was fundamentally the same question-and-answer dialogue and com-The interposition of the panel was at the firm insistence of the candimentary, that from Socrates' time, has been a favored means of throwing light on the characters and minds of men. 18 get on with the face-to-face broadcasts.

The networks and the candidates settled on a format (see Table 1) that included a moderator and panelists, which in effect, set the precedent for candidate control of format. These debates were variously termed The Great Debates, joint appearances, discussions, and Face-To-Face encounters, but the term debate stuck. Political campaigning habits and expectations about the effects of

television dominated all other considerations, and candidate self-interest governed the negouations The traditional debate format, then, was to remain safely in history books, where it could be invoked to give sanction to the current proceedings

### The 1976 Debates

bates, it was immediately apparent that candidates would once again ing the Republican nomination, President Gerald Ford challenged his take control of the televised encounters. On August 19, 1976 in accept-Although 16 years (three presidential elections) passed without deopponent. "I am ready, I am eager to go before the American people and debate the real issues face-to-face with Jimmy Carter."19

Five days later Ford met with reporters in Vail, Colorado and detailed elements of his format for the debates:

It is my very strong conviction that the American people have a right to know where I stand on the issues and where my opponent stands on the issues I challenged my opponent to a series of debates. I feel very and I suggest perhaps September 8, September 9, and September 10. strongly that the first debate should come a day or two after Labor Day

I think there should be four debates, and each debate should involve no less than 90 minutés on each occasion. The subject matters, of course, are those issues that the American people will want to know where my opponent stands, where I stand They have a right to know feel, for example, the first debate ought to involve national defense The other three issues would be domestic policy, foreign policy, ecoWith the overall format and with the debates starting as quickly as possible, I think we will get this campaign off on the right track. I look forward to the first one and each of the next three, and the sooner we get started, the better 20 Following his remarks several reporters asked Ford about debate

- Q. Have you passed this word on to Carter yet on the debates?
- Ford: I am depending on all of you to transmit this information.
- Ford No, the debates are designed specifically to give the American Carter stands differently The American people, I think, will benefit Q. Mr President, are these debates designed to help you pull up in the polls? people the nght to know that I stand here on a particular issue, and Mr

from an in-depth discussion of the four issues—defense, economic policy, domestic policy, and national defense

Will this be one-on-one, or-

Ford Those details are going to be worked out by one or more people representing me and whoever Mr. Carter decides on his behalf

Can you tell us who those people will be?

Ford We will make an announcement on that in the next day or so Have the Carter people agreed to these plans?

Ford: Those are the negotiations that I think will have to be worked out by those representing me and those representing Mr Carter 21

rations included an examination of the research on the 1960 Ken-According to one of Ford's representatives, negotiations and prepanedy-Nixon debates:

help as we negotiated this year's debates and the prepared materials for the President. In fact, I had an opportunity to discuss portions of your You may be interested to know that your 1962 book was of enormous book directly with the President in the days preceding the first debate 22 Although the candidates' motives and the format in 1976 were similar to those in 1960, a new group of participants, representatives gress had temporarily suspended the "equal time" provision (Section 315 of the Communications Act of 1934) in order to allow the networks to broadcast the debates on radio and on television, without providing the same opportunity for the more than 100 fringe party as "bona fide news events" under the sponsorship of the League (or from the League of Women Voters Education Fund (the League), jouned the negotiation process. 23 In 1960 a Joint Resolution of Concandidates. In 1976 Congress was unwilling to use that device. Instead, a series of legal moves allowed the networks to cover the debates ostensively, for any other sponsor). Throughout the 1976 negouations, that legal decision influenced the various discussions about the inclusion of minor party candidates, the selection of panelists, the role of the networks, and the actions of the sponsors.

Whereas in 1960 the path was cleared by Congress, in 1976 the legal situation was obscure and led a number of minor party candidates to as the League's careful attention to operating within the law, prompted its debate negotiators to move in a more "legalistic" manner than they file suits pleading for their inclusion in the debates. These suits, as well most likely would have preferred. Moreover, the networks were conscious that they had been included among the defendants in the suits.

Only the participating candidates were relatively free from "legalistic" constraint. A few examples illustrate some of the problems that resulted from legal considerations during the negotiations.

the evasion of Section 315 had placed the League and the networks in James Karayn, debate project director for the League, believed that an adversarial situation:

the networks won't stand still, the commercial networks, if we get debates in the Fall How can we do this so . . we don't end up in Court, or (with) somebody invalidating our efforts because we did either a naive or just an outright stupid thing, and somebody would say there was collusion. [Eugene] McCarthy, as you know, claimed there was collusion between the League and the networks 24 McCarthy's "collusion" accusation was dramatically heightened by the 27-minute "audio gap" in Philadelphia's Walnut Street Theater during the first debate The networks, preoccupied with legal considerations, had refused to supply the League with an on-air feed forcing them to install their own audio system for guests in the theater. During the candidates audio check on the afternoon of the debate, Elliot Bernstein (senior special events producer for ABC, and the networks' pool producer) determined that the candidates would not be able to hear the panelists' questions because the two audio amplification systems (on-air and house) caused "feedback," distorting the sound. The even when the network's sound failed. The culprit that failed was a League's system was disconnected and the networks' audio feed provided the theater with sound McCarthy and others claimed that if the debate was in fact a bona fide, news event it should have continued foil-wrapped 25¢ capacitor.

For the networks (especially CBS, but also ABC, which served as pool for all networks), three issues predominated, all related to journalistic prerogatives under the First Amendment's guarantee of freelateral cameras, the showing of audience reaction shots, and the though some critics make a distinction between format (meaning the dom of the press These issues were the placement and use of uniselection of panelists. All three are actually aspects of format, Alground rules for the participants) and telensed debate (meaning the production details), in reality these two terms are not mutually exclusive.

The right to use their own (unilateral) in addition to the shared because, Karayn said, many independent stations in Philadelphia had requested unilaterals and they could not grant some without granting pool) cameras was requested by CBS and rejected by the League,

Lad a branchisming to the

through the selection of audience shots (such as a snicker or a solcandidates and the League representatives it was decided that there Ford's special counsel, vetoed the plan because "[President Ford] felt reactions to the debate as it was going on would add another dimen-Audience reaction shots—showing a member of the audience on after-were requested by the networks In negotiations between the strongly about [the] real need to move the debate into a more issuement, and that's why we made that decision."27 Obviously, audience sion to the format, but it would also have permitted editorializing the television screen either while someone is speaking or immediately would be no audience reaction shots Michael Raoul-Duval, President oriented mode . . . [It] was politically to his advantage, in his judgemnly respectful expression)

Selection of panelists—questioners—caused considerable difficulty badgering the opponent, and the impression that the President was for the League (and would haunt them in subsequent debate years, ing a plan for the debate procedures, suggested that candidates question each other. After a preliminary meeting with candidates' representatives in late August, Karayn realized that the head-to-head format suggestion might not be acceptable. He held-meetings separately with candidates' representatives, but to no avail: The candidates did not want to question each other. The risk of being perceived as especially in 1984). Karayn, who spent the summer of 1976 developbeing attacked, were two of the reasons offered for not debating head-

Karayn asked the League's debate steering committee to develop a list of potential questioners, to select from among the list those the dates' negotiators countered with a proposal that they be permitted to of print, broadcast, magazine, and wire services. The same procedure suggest panelists Eventually, the League agreed to allow the reprewould follow in later debates The candidates' lists were combined committee felt would be acceptable to the candidates, and to announce the selection to the candidates' representatives. The candisentatives to submit a list of no more than 15 names in each category with the League's and selections were made. Although the League insists that it alone made the final selection, the process raised both legalistic and journalistic issues of collusion.28

with representatives of the League, candidates, and the networks, it In debriefing sessions which followed the debates and in interviews

became clear that the most notable aspect of the negotiations was control of the process by the candidates. The effect on the 1976 for-

There can be no question about who has the veto over major format elements. It is the candidates During the discussion between President Ford's representative, it was asked whether the candidates cause "ultimately we could pick up the marbles and walk out." For all practical purposes, candidates had final control over whether or not difficult, if not impossible, for the networks to exercise a "veto" on a debate, once the candidates had agreed to debate, it would have been could veto the panel's decision Raoul-Duval's answer was "yes," bethere was to be a debate. On the other hand, it would have been very Ruth Clusen (president of the League), Bernstein, and Raoul-Duval, mat cannot be overstated

The message is clear: Power over format ultimately resides in the candivery difficult for the networks not to televise them 29

than the networks, and a live audience. Also, because the event was to occur under one of the exemptions of Section 315 of the Federal Communication Act of 1934, and because the audience in attendance was in fact part of the event, questions of audience coverage, the Unlike the debates of 1960, those in 1976 had both a sponsor, other networks believed, were theirs to decide, not those of the participants

the "bona fide news event" believable. The League and the candidates Ford's debate advisers did not want an audience. They thought it might interfere with the President's concentration and distract him advisers, however, thought that the audience would make the status of from looking directly at the cameras and the panelists. Ford's legal agreed, however, that no audience reaction shots would be allowed. The networks, of course, were quite disturbed by that decision.

Bernstein; Barry Jagoda, Carter's adviser for the debates, Robert Chandler, vice president of CBS News; and Raoul-Duval revealed their positions during the debriefing conference:

special events producer in the last 13 years, I have never been in a situation where we were told, once we were given the permission to cover something .. where we can point a camera and where we can't. . . This is something that lots of people would like to tell us to a very important matter of principle for us Bernstein · It was .

Jagoda: [Our goal was to get] an opportunity to have substantive agreements and disagreements between the two candidates expressed to the American people . The question of the audience was just a technical detail There was no principle involved for us

gone to Russia and shot some sort of event there, and had the Russians you will not shoot in this direction, . everybody would have invited to cover a news event and suddenly we're told that we cannot . As a matter of fact, we suggested, rather than put us in this position, why don't you Chandler. We were put in a position that was intolerable for us Had we been horrified. And yet, here we are in the same kind of position, whether we want to take pictures of the audience or not, we've been cover part of the event. Now, that is a matter of principle and it is quite drop the audience [The League] said no, we have a tradition of auimportant to us, and it was an intolerable situation diences and we don't want to drop the audience.

Raoul-Duval . That audience was a fiction, in my judgment. We did not want the audience We wanted to negotiate away from it, and we said yes to the audience only because of the position of the lawyer ... accepted the audience not because it was the League's tradition So that audience was, in essence, there as a legal fiction.30

Other than wide-angle shots of the audience before and after the format are affected by the presence of the audience, if only because it debates, there were no audience reaction shots in 1976. Questions of introduces another element in the negotiation process—another consideration for candidates, sponsors and networks to work out.

sion journalists' craft, was also part of the message. Power over format Audience reaction shots, which have long been part of the televiand aspects of television presentation ultimately resides in the candidates' camps.

dates' decisions was public opinion. Public opinion, however, exercises idential race. Press access to information on the campaign trails is dates and their advisers must respond because public opinion usually As Raoul-Duval pointed out, the only factor that could alter candimore influence on candidates' decisions whether to debate than on their views about format. Pollsters, columnists, and the news media generally, conduct and report poll and survey findings about the presabundant. Whether debates will be held is a constant topic in media reports. Candidates are regularly asked about their intentions. Candimounts in favor of presidential debates. That was and remains a significant factor.31

The moment debates are announced, negotiations are enveloped in as it proceeds gets the impression that what "gags" the negotiators is nothing less than the threat of punishment under a "Debate Secrets secrecy. One who attempts to gain information about the negotiations either officially or off the record. Inevitably, there are leaks, but no Act." Agreements are made about what can and cannot be released,

didates' representatives fear, paraphrasing Martel, "One mismove bate cancellation; broadcasters fear some sort of retribution, and cancould hardly influence the determination of format, because little is publicly revealed about it until the negotiations are completed. Both from the candidates' point of view and from the League's, it would be bad publicity to let the public know that candidates have control over negotiations, and furthermore that they are even able to keep the fact of that control a secret The following transcription from a debriefing and the election is lost." Public opinion, certainly in the short term, session after the 1976 debates makes clear that all parties had agreed one wants to upset the debate negotiating process Sponsors fear deto withhold certain aspects of the negotiations from the public.

Raoul-Duval Well, do we have an agreement and our agreement is no longer binding? (Laughter) . . . Peggy Lampl (League executive director) We had an agreement about the negotiation—

Clusen: That we would not talk about it and we didn't

Sudney Kraus (Professor; chairperson, debriefing conference). This is a changed but everything is on the record I hope that we're not going to debriefing session and everything is on the record. The language can be keep secrets, or any other agreements here . .

three parties, the League, representatives from Mr. Carter and representatives from Mr. Ford agreed to, but we did have an agree-Raoul-Duval I want to bring that out It obviously is not for you or any other single person around this table to abrogate an agreement which ment . . . and that is, we would not characterize the process of selecting the panel I assume it is in everybody's interest that that is over with Clearly, the 1976 experience reveals how difficult it would be to persuade candidates to participate in traditional, genuine debate. Even if the force of public opinion were on the side of genuine debate it is doubtful that such would occur. Anticipating the possibility of debates in 1980, George Will in a broadcast made sense for "real" debates:

In 1976, in the first debate between Ford and Carter, the audio system failed, and both men stood there like stumps for 27 minutes, not exlectual high point of the campaign-for 27 minutes, neither man was changing a word. Some people considered that silent stretch the intelmisleading the nation. debate with Kennedy during the Iowa n

Will cited the recommendations in a Twentieth Century Fund report 3s that in the 1980 debates candidates should address arguments and questions to one another He continued:

True debates are rare What goes on in Congress is usually mere declaiming, not debating—not the cut and thrust of people developing and defending arguments. And the 1976 "debates" were not real debates. They were more like joint appearances on "Meet the Press," or like parallel, simultaneous press conferences. We have enough press conferences during campaigns. We need what tiue debates can provide—a sense of how candidates can think on their feet, how—or if—their minds work when they are not programmed for a controlled stuation. The debates should animize the role of journalists as interrogators Candidates should argue back and forth, with only minimal control Increasingly, campaigns consist of 30-second commercials and other prepackaged episodes. Real debates would force candidates to think in public, to think without scripts Such debates might be a dismaying spectacle, but it is better to be dismayed about politicans before rather than affer the election 34

Will, Auer, and other advocates of genume debate were not to be satisfied in 1980, another debate year in which candidates' self-interest and political posturing characterized format negotiations.

## The 1980 Debates<sup>35</sup>

The election of 1980 has been described as volatile. Throughout the primary period, public opinion polls depicted a vacillating electorate. Shifts in voter intention were of such magnitude that, for example, Bush climbed from some 8 percentage points (Reagan had 50) in September 1979, to 45 points in January 1980. He moved ahead of Reagan, who dipped down to 36, in those 4 months, Bush gained 37 points, whereas Reagan lost 14. Between Bush's victory in the Iowa caucuses and the time just after the first debate in New Hampshire (less than a month) Reagan regained the lead, and moved ahead significantly to win 36.

In the Democratic primary, Carter and Kennedy had similarly been engaged in campaigns that alternately faltered and plunged ahead. The electoral outcomes were generally unpredictable from primary to primary. Kennedy, behind in the polls, challenged Carter to several debates. The President, well ahead, refused each challenge. Inflation and unemployment were on the rise, however, and when the polls reflected an impatient electorate, Carter reconsidered and accepted a

debate with Kennedy during the Iowa primary. When the American hostages were taken in Iran and public opinion moved quickly to support the presidency (as it usually does when our country faces a foreign crisis<sup>37</sup>), Carter moved quickly to postpone (cancel) the debate with Kennedy.

Once Carter and Reagan became the nominees of their parties, the call for debates quickly arose among a variety of potential sponsors The League, sponsors of several primary debates, sook the inside track with an early invitation to both candidates.

If the 1980 primary period was volatile, the candidates' jockeying for exposure and advantage, and the League's attempts to mediate problems, made the efforts to mount debates precarious, but kept them in the public's eye.<sup>99</sup>

The Baltimore Debate. The three-way race to the presidency in the general election made more complex what was already a campaign filled with critical events John Anderson's candidacy—good for Reagan, bad for Carter—made difficulties for the League, which, once agan, sought to sponsor debates. Anderson, running as a Republican in the primary, switched to an Independent candidacy for the general election. The League was prepared to extend debate invitations only to Carter and Reagan, but had to consider rising public support for Anderson's inclusion. They decided to rely on his standing in forth-coming polls as an indication of his qualification for participation (see chan. 5)

On September 9, the League announced that Anderson's standing in the polls demonstrated "significant voter interest" and that they had invited the candidates to a three-way debate Reagan and Anderson accepted, Carter declined.

Thus, the candidates' strategies toward the debates crystallized, as did the League's own position. Reagan and Carter both knew (from their survey reports) who would benefit from Anderson's participation in the proposed debate. Reagan felt he had much to gain, and Anderson, of course, had nothing to lose. Carter, slipping in the polls as the economy lagged, and with the Iranians recalcitrant as ever, wanted to debate Reagan first. He would then consent to a three-way debate. Reagan refused to debate without Anderson, saying that it was not his place to "uninvite" a participant.

The League's position was forced—it could not alter the invitation. Other potential sponsors (e.g., the National Press Club) emerged, suggesting Reagan—Carter debates in a variety of formats. Carter was determined in his refusal to participate in a three-way debate. The League made plans to hold the debate and include an empty chair, a

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before the Baltimore debate. Ruth Hinerfeld, League President, said that the League had been "advised by legal counsel that the legal should not do so."41 The debate program given to members of the ploy that threatened to reveal Carter's "cowardice" 40 With considerable pressure from the local Leagues throughout the country and from Democratic Party officials, the League withdrew the empty chair 4 days questions [of] having an empty 'chair' are sufficiently serious that we audience, however, included Carter among the "invited candidates."

Earlier (September 15) Reagan and Anderson representatives met timore debate. Among other elements of the format (see Table 1), it was agreed that each candidate would be allowed to question the with the League for 21/2 hours to make arrangements for the Balother; 42 responses would be limited to one and one-quarter minutes. In last-minute negotiations, however, candidate-to-candidate questioning was eliminated from the format. It was this kind of flip-flop control by candidates that infuriated Lee Hanna, who, along with his brother Ed, were the League's 1980 debate producers After the election Lee Hanna detailed his frustration with the negotiations:48 "the candidates' representatives were pathetic in their desire to protect what they saw as their candidate's interests. The negotiations were sponsible for the format, length, number, and subject matter of the had it been part of the League's debate invitations, most likely would have eliminated the Hannas' jobs: "[The League] will be solely reexercises in frustration and hilarity." Hanna offered a solution that, debates. . these are not matters to be bartered and brokered with the candidates."

Charles Frey, producer, special events and the ABC pool producer, In this debate negotiation, broadcasters were determined that candidates should not dictate the kind of shots the cameras could and could not take, and they out-maneuvered both the candidates' representatives and the League on this issue. As did Bernstein in 1976, pressed hard for reaction shots.

meetings about the issue with candidates' representatives refusing to budge, the networks insisting on maintaining their journalistic pre-At the first meeting between the networks and the League, Frey deemed it appropriate The League supported the candidates' position that there be no reaction shots. Subsequently there were several stated that the pool would take reactions shots if they (the pool) rogatives, and the League, besieged with last-minute hassles,44 in the middle, but officially with the candidates

William Small and William Leonard, presidents of NBC News and representatives detailing their networks' position on reaction shots CBS News, respectively, sent telegrams to the League and candidates

and cutaways. They wanted to be able to cut away from the candidates and panelists with reaction shots whenever they felt such would reflect cover the debates as news events, switching from the stage to the an important part of the proceedings. Their unilaterals were not allowed in the hall Outside the hall, the networks chose positions for these cameras that would allow access to, and interviewing of, digni-Essentially, the networks (as distinguished from the pool) wanted to taries and audience members as they entered and left the debates. audience as they would in any other event

During the evening of September 18, Frey, and Ed and Lee Hanna discussed the issue over dinner. The Hannas reported back to the League and to the candidates' representatives that the pool intended to honor shots requested by the networks' directors. 45

On the 20th, the day before the debate, Hinerfeld outlined again the League's position on reaction shots in a letter to Frey and telegrams to Small and Leonard. With the pool insisting that they use their own discretion with reaction shots, Dick Wald, senior vice president for ABC News, called Frey at 11:30 on the morning of the debate and requested that Frey in his capacity as pool producer release the letter and telegram sent by the League. Carol Ann Rambo of pool public relations shortened the original version and released it. Not since 1960 had the networks been able to reaffirm their journalistic prerogatives in debate coverage as they had done on that day.

Once again, the League generated a long list of potential panelists, < and again, the selected panel was composed of journalists. In 1976 and 1980, they toyed with the idea of including nonjournalists—experts in various fields—as panelists. Raoul-Duval thought that lawyers and professors were sometimes naive about politics, debating, and the political process. Harriet Hentges, who replaced Peggy Lampl as executive director and was a member of the League's 1980 debate negotrating committee, provided a significant enterion for selecting jour-"You have to have some feeling for . . . the person's knowledge and ator (1976, 1984) and panelist (1980), that Sander Vanocur was a panelist in 1960 and a moderator in 1984, and that Howard K Smith ability to act in that sort of performance" (italics added). It was not an accident that Barbara Walters appeared in three debates-as moderwas the moderator for two debates, 1960 and 1980. Smith was also nalists, instead of experts, for the Baltimore debate. She insisted, moderator for the several League-sponsored debates in the 1980 presidential primaries.

Broadcasters dominated the panels in 1960. In 1976, Karayn and the League included more print journalists. Among the 52 moderators and questioners in the presidential (and two vice-presidential

Television personalities are able to perform effectively in front of a camera, but they are not the only ones who appear before the lens. It If we must have panels of questioners, why must they be exclusively Journalists and television personalities? Journalists are trained to ask questions, but they are not the only ones able to construct them. would be a novel innovation for journalists to cover debates without journalists in them Nonjournalists may bring a new and useful dimension to televised debates. Some historians, poets, novelists, and professors may add questions with perspectives more germane to the qualities of presidential leadership than some we have had in past The Cleveland Debate. During the period after the Baltimore and with some experts anticipating a very close outcome Just a few days before the Cleveland debate, polls reported a slight lead for Reagan, before the Baltimore contest, the League, hoping to entice Carter to enter that debate, invited Carter and Reagan to debate in Cleveland without Anderson. A previously scheduled debate in Louisville was cancelled (that city would have to wait until 1984 for its national publicity); four had been planned originally.

The League had two teams, one in Washington, the other in Cleveland, diligently trying to salvage an already disappointing debate schedule. Carter, midway in the period, accepted the debate invi-

Ed Hanna, busy with the League's preparations in anticipation of the Cleveland debate, was asked 46 if he thought that the League could bring about a format similar to that in the Chicago and Houston wheeling debates, with candidates asking questions of each other. He did not "feel that the candidates would buy it Certainly Reagan won't." Moreover, Hanna was ambivalent about the debate being Republican primary debates, both of which had been wide-open, free-

weighing the present time limits, [are] trying to measure what is in effect a calculated risk As we have known for quite some time, there are two camps within Reagan's people—one wanting to debate, the other I'm sure that right now, maybe even as we speak, Reagan's people, You're ahead so don't press your luck "But [Reagan's] no longer ahead Well, looking at it from his point of view, if I were one of his advisers, camp saying, "No, don't do it We did great in Baltimore Don't push it

I've no doubt that I would have given him the same advice But now I don't know what I would advise him Because it is really a toss of a coin, and it.may be a "heads you win, tails I lose here [in Cleveland]" situation The League's Washington team worked behind the scenes trying to induce Reagan's representatives to accept the debate invitation Earier, there was a dispute between Reagan's advisers, Ed Meese and Jim Baker, about accepting the invitation. Baker was convinced that Reagan's acting ability and his personal manner would give him an advantage in a televised debate. Reagan accepted the Cleveland debate invitation.

In this case, Reagan's advisers were against direct questioning by cancandidate was badgering the President of the United States. Baker's as Newsweek reported it, "Baker handed Reagan a 3-by-5 card with one word on it. 'Chuckle' When Carter began criticizing him, Reagan It was once again apparent that the format would follow precedent. didates because they did not want the voter-viewer to feel that their chuckled, adding, 'There you go again.' The reply defused Carter's advice to Reagan on the night of the debate was couched in one word. attack "47

rations that candidates and their advisers ntually perform. Both Carter and Reagan rehearsed aspects of their debate performance. Each Posturing and role playing are inevitably part of the debate prepaanticipated the other's reactions and possible tactics during these rehearsals.

bate, the candidates would have none of that. Finally, in the long. Format negotiations were based on strategies designed to win the negotations, the League came up with 22 names for panelists. Again.. election. Although the League pressed for elements of genuine dewheeling debate with candidates questioning each other, neither his the candidates had a veto over those they opposed. Essentially, the negotiations created a format modeled after the 1976 debates. Although some of Carter's public statements seemed to suggest a freenor Reagan's representatives would accept such a format during the October 20 negotiating meeting in the League's Washington office.

The Cleveland debate was a culmination of a series of critical and sometimes unforeseen events, some of them created by the campaigns, others, such as negotiations for the hostages in Iran, arising independent of the campaigns Accompanying the Cleveland debate was the Anderson "debate" on Cable News Network fed to PBS stations. He debated an empty chair One person "debates" are at best political statements and at worst make a mockery of political debating THE ROWNATE WORNING TO THE

followed. All political debates have been ultimately measured that way Carter's and Reagan's debate performances were measured in terms of "who won" in the media reports and academic studies which (see chap 4) This simple explanation stands in the way of those who would like to move in the direction of genuine debate. Presidential candidates shun such suggestions as though they could cause a serious illness-a dreaded "political disease" that could kill their candidacies

tionism that political staff members become interns and residents Extending the analogy, candidates' representatives behave like guarding the political health of candidates. So intense is this protecphysicians embarking on a preventative care plan for their patients, trained in a school of political medicine whose prescriptions occasionally have serious side effects, or cause fatalities The Watergate break in and much of the subsequent cover-up were results of prescriptions by ideologues and zealots associated with the Republican National Committee and Nixon's staff of 1972.

egres designed to avoid perceived pitfalls. In developing these strategies, campaign staffs, consultants, and political elites seek advantages The avoidance of genuine debate formats is in keeping with stratfor their candidates, sometimes in most extraordinary ways

Three such incidents were associated with the 1980 debates. In mid-1983 it was discovered that somehow President Carter's 1980 debate briefing book was in the hands of Reagan's advisers just before vealed that George Will, a most respected conservative columnst and mediately after the debate, Will, on ABC's Nightline, acclaimed Reathe Cleveland debate. 48 Closely following that bombshell it was repolitical analyst, was one of Reagan's Cleveland debate coaches. Imgan's appearance as a "thoroughbred performance." He failed to inform the audience that he had coached the candidate. And, at the Baltimore Debate, a Carter staffer, Linda Peek (Jody Powell's assistant), allegedly attended the Anderson-Reagan debate in Bal-

Evidently, the risks taken in these instances are not as potentially damaging to the candidate as risks associated with a genuine debate format. The logic of political campaigning is sometimes peculiar. timore masquerading as a guest and disguised with a wig. 49

## The 1984 Debates

dale in 1984 had to compete with several candidates for the Democratic nomination. Unlike Reagan, however, Mondale was unsure of his As did Ronald Reagan in the 1980 Republican primaries, Walter Moneffectiveness on television. The day after he lost the election, Mondale claimed that his major liability was his ineffectual use of television

This is indeed curious because the evidence suggests that Mondale was not a television neophyte Mondale demonstrated his ability to use television on several important occasions. In his 1976 debate encounter with Senator Robert Dole, Mondale's television performance was effective. Reviewing studies of the impact of that debate, Sears and Chaffee found that

presidential debate, where Mondale scored a personal triumph. His populanty, competence, and trast evaluation all improved following the There was [a] significant attitude change as a consequence of the vicedebate, and more so among [debate] viewers than nonviewers 50 In the nine televised democratic primary debates of 1984 Mondale fared quite well, parrying and thrusting with whomever he faced. His "Where's the beef?" retort to Gary Hart was certainly as good a oneliner as Reagan's "There you go again!"

His acceptance speech at the San Francisco Democratic Convention vision. Mondale's performance in the first debate (Louisville) was certainly more impressive than Reagan's, although his debating posture in Kansas City (the second presidential debate) lacked his earlier vibrant showing. 51 As Pomper aptly asserted, "Mondale could claim revealed that Mondale had no qualms about debating Reagan on telecredit for [Democrats' gains] because of his performance in the debates and his vigorous closing efforts. The election was a victory for Reagan, but not a personal defeat for Mondale "52

Mondale. The President's popularity ratings hovered over the Monto use television, beyond that of presidential access, weighed heavily in deciding the Mondale campaign strategy. Mondale's advisers were date and Reagan. From the outset, Mondale found it difficult to mount a strategy based on issues. The polls and the continual pres-Reagan's victory can be seen as a triumph of the use of political television. The polls continually showed that Reagan was far ahead of dale campaign like vultures about to devour a corpse. Reagan's ability dential election that deserve our attention. 54 Another aspect worthy sure of women's organizations (most notably the National Organizaconcerned over the voter-viewer's comparison between their candition of Women) to include a woman as vice president on the Democratic ticket53 combined to influence the direction of the Mondale campaign Under these circumstances it was reasonable to react with the selection of a woman as the vice presidential candidate and the televised debates—were two of the three highlights of the 1984 presi-"political attractions" that might counter the popularity of the President and provide momentum for the campaign. These "attractions" of discussion is incumbency and debating. There has been much discussion about the disadvantages for an incumbent president to debate, especially when he is ahead in the polls 55 The 1984 election provides a unique opportunity to examine that thesis. And the conclusion is obvious. if ever an election set a precedent for the institutionalization of televised presidential debates this was the one.

Using the Democratic National Convention in San Francisco as the springboard, the Mondale campaign orchestrated the formal debate The Debate Challenge. It was quite apparent in 1984 that Monchallenge with statements made in the early parts of both Senator Edward Kennedy's speech introducing the nominee and Mondale's dale's strategy placed great store on televised debates with Reagan acceptance speech.

senator Kennedy exclaimed that "In 1960, before the debates, they Ronald Reagan 'the great communicator.' But we remember who won called Richard Nixon 'the great debater'—and in 1984, they call the debates and the election. John Kennedy did-and so will Walter challenge Mr. Reagan to put his plan [for reducing the deficit] on the Mondale—and so will Geraldine Ferraro "56 Mondale's summons "I table next to mine—and debate it with me on national television "57

ratings of any president, unfettered by a primary; his campaign coffers President Ronald Reagan—enjoying one of the highest popularity reported President Reagan was leading Mondale by 18 percentage points, 55% to 37%. Given his enormous popularity and the incumbenfilled; ahead in his re-election bid, and facing a challenger with several electoral problems—agreed to debate Democrat Walter Mondale Tust a few days before the first debate ABC News/Washmeton Past Poll cy, Reagan had little to gain and much to lose debating Mondale. Why, then, did President Reagan accept Mondale's challenge?

Apparently, the decision to debate had more to do with ego than with election savvy. His aides cautioned against participating in debates, citing his enormous lead and his ability, as President, to command attention of the mass media. Evidently, President Reagan was not willing to let Mondale garner campaign issues Certainly, he was not prepared to concede that in a nationally televised debate he, the actor turned politician, 58 would be "damaged" by a challenger without such credentials. After all, he had clobbered Carter in the 1980 debate, and was indeed "the great communicator."59

would debate him, although not as often and as long as Mondale's negotiators had hoped for The Mondale campaign strategy included a call for nine, 2-hour televised debates (three of which were to be vice In mid-September, then, Mondale was informed that Reagan

presidential debates) on a wide range of issues Reagan's negotiators Both camps settled for two, 90-minute, presidential debates—one on foreign, the other on domestic and economic issues—and one, 90would have none of that They offered one, 1-hour, one issue debate minute vice presidential debate on both foreign and domestic issues THE THE PROPERTY OF THE

An examination of the negotiations and preparations for the 1984 debates (held in Louisville, Philadelphia, and Kansas City) offers further evidence of candidate control, introduces additional questions about format and the selection of panelists, and raises doubts about the League's sponsorship of presidential debates The League Sponsorship. For the third presidential election in a row, the League of Women Voters Education Fund became the sponsor of the 1984 presidential debates. The League's administration of debates in 1976 and 1980 sometimes was met with criticism, but their handling of the 1984 negotiations and accommodations of candidate demands, particularly the procedures for selecting the panel of questioners, came under fire from several quarters. The issues raised can be traced back to 1976, but it is sufficient to begin with the formal announcement for 1984 debates

In the September 17 announcement of plans for the debates, Dorothy S Ridings, President, League of Women Voters, said the following:

Arriving at this package has been a long and productive process. The League has been talking to the campaigns for more than a year about a debate this fall In June we submitted a debates proposal to both campaigns as a starting point for discussions. We knew from experience that the negotiating process would be a long one movolung many strategic considerations on the part of both campaigns. (italics added)60

League came under a good deal of criticism, they have by this time tions) that the League has had. Indeed, despite a clamoring from many groups to sponsor presidential debates in the general elections they should come along as sponsors Although (as we see later) the become debate experts No other single group has had the amount of debate sponsorship experience (in both primaries and general elecsince 1976 only the League has done so. As a result of these Leaguesponsored quadrennial debates, its leadership has taken on a differ-If debates are to be institutionalized certainly the League feels that ent, more prominent, public presence.

debates in presidential elections. There is little question among rank For almost 2 decades now, the League's national presidents have had significant mass media exposure as spokespersons for the ensuing

a "IDEANTE FORMETS" ...

and file Leaguers that one significant unofficial qualification for election as president of the League has become the ability to work with politicians, campaign advisers, mass media personnel, and presidential candidates—in short, the ability to bring about and coordinate all the latter attribute has been part of the League's experience from its beginnings, the former is largely a result of debate activities comof the elements and personnel associated with televised presidential debates. League presidents, like American presidents, must be able to project a positive image as well as understand political issues. Although mencing with the preparations for the 1976 presidential election

In its attempt at planning from election to election, and then from debate to debate, the national League has worked closely with its locals example, anticipating that a debate would be held in their city, local to establish a modicum of continuity, sharing some administrative debate experience, and "prepping" future local leaders. In 1980, for timore. Political maneuvering among local League leaders gave the second presidential debate site to Cleveland 61 Louisville would have leaders from the Lousville League monitored preparations in Balto wait 4 more years

Still, all the debate planning in the world will be for naught if the concepts and procedures under which they are to be held are basically flawed, as was evidenced in Louisville.

presidential debate could have been anticipated beforehand. There The Louisville Debate. Much of the negotiations for the first 1984 was the usual jockeying among candidate advisers to gain the best conditions for their candidates. Among other minutta, placement of tiators. Mondale's camp wanted a black backdrop; Reagan's associates insisted upon blue. But these were minor disagreements compared to podiums, lights, and even the backdrop were of concern to the negothose in the panel selection process. That task brought the League, the candidates representatives and members of the press into haranguing in public.

On October 6, the day before the debate, Ridings called a press was the first time that "secret" negotiations were publicly revealed in conference and began a tirade against the candidates' representatives' behavior in negotiations to set the panel of questioners. Because this such a manner, and because its relevance for format considerations is paramount, it may prove instructive to examine Ridings remarks:

Ridings names three panelists for the Louisville debate and two for the Philadelphia vice presidential debate ] We regret that this announcement is late in coming. The selection process this year has been slow. We

we did not want the selection process to interfere with the seriousness and the purpose of the debates themselves This year, however, the process has been declined up to now to comment on the reasons for this slowness because

of journalists for each debate, and we did this. We submitted names of highly qualified They're all first rate journalists and superb questioners So same one we used m 1976, and not one name was struck that year In 1980 a been abused After exhausting our initial lists we ended up submitting In our negotiations with the campaigns the League agreed to submit lists qualified journalists. 12 for each debate, grouped by their known experuse in the issue areas of each debate. They also are individuals we knew would ask incisive questions that would elicit substantive answers. In broadcast and print journalism. We also were looking for women and men and for minorities Every person on our list was unquestionably you can imagine our great dismay and disappointment to learn that most names were being vetoed by both campaigns This process was the similar process was used, and while some names were struck, the panel was selected from the League's original list Ironically, we agreed to a panel reluctantly this year because we prefer a format using a single moderator And now the selection process that we agreed to in good faith has addition, we sought professional diversity; panelists would represent close to 100 names—again, all journalists with impeccable credentialsto both campaigns

At this point only the three persons I have named are acceptable to both campaigns We will have a debate tomorrow But whether it is only with a panel of three, or if we are able to resolve this conflict today, I can only speculate at this moment The League remains committed to the concept of face-to-face debate among candidates for the highest office in the United States There is a future searching after this series is concluded. Thank you and I will be happy for debates Indeed, presidential debates are an expected and anticipated part of the campaigns. Similarly, journalists as panelists, have become an integral part of the debate. With massive problems and confusion resulting this year from the panelists selection process we'll require some soulto answer your questions (italics added)62

ment on and whom I asked to serve as panelist, Charlie McDowell of the Richmond Times-Dispatch, withdrew . . because of his belief, which In the subsequent question-and-answer pernod, Ridings revealed that all parties had agreed to a panel with a moderator and four journalists, but "unfortunately our fourth panelist that we had agreeis similar to ours, that the debate format should use a moderator only and no panelists."

The League now assumed a firm stance: No more lists; either the candidates' negotiators agree on a journalist from the lists already provided, or the debate will include only three panelists.

y true age

This press conference finally revealed, the negative effects of the panel selection process essentially used by the League since 1976. In that year Richard Salant, former president, CBS News, then vice chairman of the Board, NBC, got into a brouhaha with League representatives about the method of selecting journalists. Salant's position, which is generally upheld by the press fraternity, was that neither the interviewee nor their representatives should have a voice in determining who the interviewers should be. The League's position was that some input from the candidates was necessary so that the (interviewers) panelists would be perceived as being "fair."63

Rudings admitted that the selection process should be reexamined, and allowed that the "procedures required soul searching." She referred to the well-publicized incident in 1980 when George Will, the columnist, and political analyst for ABC, breifed Reagan prior to his debate with President Carter, he then "participated as a journalist in commentary after the debate."

The panel selection process has been fraught with problems, causing continual disputes, raising format criticisms, and even nagging at the credibility of the debates. Now, during this remarkable League press conference, the issue was put succinctly when a reporter asked, "As you explained, the process involved the campaigns being able to say yes or no on these [journalists] people, right? [Ridings agrees] So how is the process abused if that's what they did? Are you saying that they were just too picky?" Ridings replied:

Naturally we assumed that any strikes [sic] would be made for ... a reason that would be considered partly political, partly campaign-strategy-oriented. We would not want a panelist with whom one candidate felt very uncomfortable, or whom they felt was biased towards their campaign, which was the reason we agreed to this process in the beginning We feel that the process was abused and that many superfluous and unnecessary reasons were used to strike. There is no way ... we could have given them 100 names of highly qualified journalists and end up with three. No way!

But the way led to only three panelists, despite the League's desperate attempt to enlist Barbara Walters as both panelist and moderator. Walters refused in a symbolic protest against the process, but not the League. What occurred the following evening in the Robert S. Whitney Hall of the Kentucky Center for the Arts was, in effect, a "public demonstration" of who controls how presidential debates shall be conducted It was also the first international display<sup>64</sup> of the League's inability, or refusal, to override the candidates vetoes, overcoming the final authority of the candidates

Journalsts responded with sharp, formidable criticisms against the selection process and the League's handling of it Alfred R. Hunt, Chief of the Washington Bureau of the Wall Street Journal, among others, attacked the process "only three journalists could be found who weren't blackballed by one of the campaigns and were willing to abide by this abysmal process."65 Daniel Schorr, CNN news commentator, said the League had been "roundheeled It should be their debate and they shouldn't let anyone dictate to them."66

Other critics lambasted the League and called for its dismissal from presidential debates sponsorship. Broadcasting, the leading industry publication interviewed two broadcasters who were negotiators in the Kennedy-Nixon debates. Frank Stanton, President Emeritus of CBS Inc. said, "I don't see any need for the League. We didn't have it in 1960." Leonard Reinsch, who was John Kennedy's chief debate adviser, joined Stanton in insisting that, "The purpose of presidential debates would be better served if the League of Women Voters were not involved."67 And even one of the League's long time advisers, Newton N. Minow (former FCC chairman), suggested after the debates that the two major political parties should sponsor (run) the debates. Losing a panelist, however, evidently did not disturb the candidates' negotiators

Both campaigns conducted mock debates in advance, with no-holds-barred questions posed by stand-ins for Mondale and Reagan. The usual briefing books were prepared and studied Strategies were argued and decided upon. Issues were examined in detail. Image considerations—ways of projecting a certain demeanor—were rehearsed. So intense were these preparations for the first debate that other aspects of the campaigns were brought to a virtual halt. The growing body of televised debate research and the experience of previous campaigns combined to form an immense resource commanding the attention of both advisers and candidates. It was evident that even the candidates' preparations for debate had been "institution—

As the Louisville debate progressed, an extremely interesting reaction was developing among the audience in the hall. President Reagan was being perceived as losing control of the debate; Mondale appeared to be in command. The astonishment among members of the press and other guests invited to watch the debates in Whitney Hall was evident. Mondale, "the erstwhile wimp," bettered Reagan, the "great communicator."

great communication.

Reagan's advisers were concerned and adjustments were made for the second debate in Kansas City. Meanwhile, however, of immediate concern was the preparations for the vice presidential debate in Phila-

The Philadelphia Vice Presidential Debate. There was a sense of excitement as well as a seriousness of purpose with the approaching of the vice presidential debate. Anticipating the first time that a woman debated in such a setting gave the press a reason to continue with one 4). The public's response to Mondale's success in the first debate gave the Mondale-Ferraro campaign a much needed boost Using conservative figures, the gap was reduced by 6 points, from 18 to 12, providing some justification to the "horse race" press coverage that is associof the most covered events/issues in a presidential election (see chap ated with debates (see chaps. 4 and 5)

Hidden behind the seriousness of the event were some rather picadate's television image and, presumably, votes. These details appear in negotiations from debate to debate. It will be recalled that in 1976 Carter and Ford were measured from their belt buckles to the floor so that the height of their podiums could be adjusted providing equal torso framing on the television screen. This year Ferraro needed some yune concerns about technical details that ostensibly affect a candiheight adjustment:

He's over six feet. I'm five feet four inches. The Democrats didn't want Nothing was overlooked by the two campaigns, down to the tiniest him to be looking down at me or, more important, me looking up at him Over Republican objections, we had a gently inclining ramp built out of the same material as the floor covering so that as I took my place detail My height compared to Bush's was going to be a disadvantage for me behind the podium I would be closer to the same height as Bush without having to step up on anything. (italics added)71

television sets better vends his or her candidacy to voters than the unfortunate candidate with the smaller torso. Lacking specific scientific evidence, debate television consultants insist on making such Evidently, the candidate with the taller torso on American households adjustments 72

Republicans vetoed that in favor of the usual press panel. This time the direct approach was nixed because of public perceptions about a In negotiations, the Democrats wanted face-to-face debates, but the

spirited woman debating a decorous vice president. Before the debate Ferraro told two columnists that "she could hit him as hard as she liked, and he would not be able to return her fire in kind for fear as being cast as a bully."73

format, "unable" to confront Bush directly Only one time during the debate had she found a way to circumvent the questioner and get to the difference, Mrs. Ferraro, between Iran and the Embassy in Lebanon," she asserted, "Let me just say, first of all, that I almost resent, Vice President Bush, your patronizing attitude that you have to teach me about foreign policy." Curiously, however, the ques-But Ferraro, the feisty campaigner, would be handicapped by the Bush directly In response to Bush's statement, "Let me help you with tioners avoided one of the most publicized issues in the campaign.

The most unique part of the general election was Ferraro's candidacy that ultimately found her in a quagmire of questions about her family's alleged association with organized crime figures. Despite increased media reports on this issue during September and early October, none of these questions were raised during the debate. Nor, had they appeared to disturb her debate preparations.

in preparations for Mondale's 1976 vice presidential debate, acted as Robert Barnett, a Washington-based lawyer who had been involved coordinator of a special debate staff for Ferraro. This staff came up with an 8 pound briefing book74 that Ferraro studied nightly, for 2 weeks prior to the debate.

television studio where Barnett played Bush. The studio included a occasions, and just days before the debate went into a New York Additional preparations included the now-common practice of rehearsing the debate. Ferraro was questioned by "panelists" on several complete mock-up of the actual stage setting in Philadelphia. For 2 days these rehearsals were taped, studied, and criticized

After the campaign, Ferraro described the contrived rehearsals...

All the candidates were doing it, of course Mondale Reagan Bush But that's what always made these debates so phony You get to say so little, and what you say is so well rehearsed that I'm not sure the public has any debate. And besides, that's not what a real debate is all about. A real debate involves a direct exchange between the opponents, a point-counterpoint But the formats for these political debates have dictated that the more idea of what the candidates really stand for than it did before the results are contrived—more like theater than an intellectual contest.75

debate format somebody, usually with the "upperhand" in negota-Somehow each time some one proposes some form of a classical

tions, squelches the suggestion. It appears that we will have to wait for the "right" conditions, whatever they may be, for such debates. Those conditions, evidently, were not present for the final 1984 debate.

The Kansas City Debate. The net assessment of the Bush—Ferraro debate had been essentially a "draw" although the polls placed Bush slightly ahead (see chap 4). In essence, the vice presidential debate, interesting for its historical import, did nothing significant to the momentum of the campaigns Anticipation of the second presidential debate stemmed from how the two candidates dispatched themselves in Louisville.

Reagan's poor showing in the first debate astonished many political pundits. He appeared to be confused and distracted. <sup>76</sup> Reagan's unexpected performance raised questions about his age and his competence. Similarly, Mondale's unanticipated forceful performance prompted the media to reflect on their earlier appraisal of him as a "wimp" campaigner (see chap. 4) Certainly, the media expected the President's demeanor in this debate to either dispel the age issue or to exacerbate it further. Consequently, both the press and the campaigns looked to the Kansas City debate as a deciding factor in the last stages of the election. Both camps' preparations, therefore, considered the public perceptions of the contenders' performances in the Louisville debate.

This time the President's campaign advisers were not allowed to rehearse him with the kind of detail and rigorous questioning that had gone on in preparations for Louisville with David Stockman as Mondale's stand-in Senator Paul Laxalt, the President's friend and confidant, attributed Reagan's lackluster display in Louisville to an arduous, artificial, preparation process that "brutalized" the President <sup>77</sup> For the first debate, the rehearsals did not help Reagan to be himself—at ease and in control. Germond and Witcover, two of the most experienced presidential campaign watchers among members of the press, suggested that:

[To insure that Reagan would be] relaxed and confident. his debate coaches decided . to employ a tactic most surprising in dealing with a professional actor of long experience. Their repeated criticisms of the President's answers in the rehearsals for the first debate had seemed to discourage him, so the second time around they intentionally applied an old-fashioned ego massage from time to time to keep his spirits up. . [Jl-de-Persident of the United States, like any uncertain schoolboy, was given encouraging words when he came up with the right answers?

Mondale, buoyed by besting Reagan in Louisville, and encouraged by the subsequent media reports, went all out for this last debate. He bypassed the Al Smith dinner in New York and intensified his preparations for the Kansas City encounter

On the night of the debate, journalists in the press room were readying the tools of the trade, anticipating that the age issue would be of prime importance. Germond and Witcover noted media's attention to the age issue:

The agreed-upon subject on this cool late October night in Kansas City was foreign policy. But the age issue was on the minds of all those crowded into the classic old theater. In the 2 weeks since the first debate, the question of Reagan's competence fueled a continuing stream of newspaper and television commentary.

Many journalists came armed with potential "sidebars" and "shooting scripts" relating to Reagan's age and Mondale's new found television acumen. It was indeed curious that the last debate, a discussion of foreign policy some 2 weeks before voters would elect the next President of the United States, many members of the credentialed press corps were hunting around for stories on the effects of old age.<sup>80</sup>

The hunt, however, was short-lived. The age issue emerged early in the debate and was summarily dismissed with "One Hell of a One-Liner."81

Panelist Henry Trewitt of *The Baltmore Sun* raised the age issue: "You already are the oldest President in history.... I recall... that President Kennedy... had to go for days on end with very little sleep during the Cuban missile crisis. Is there any doubt in your mind that you would be able to function in such circumstances?"

Reagan replied, "Not at all Mr Trewitt. And I want you to know that also I will not make age an issue in this campaign. I am not going to exploit, for political purposes, my opponent's youth and inexperience."

That exchange gave the audience in the theater, including the press corps invited to observe the debate from the balcony, a good minute's worth of hilarity. Germond and Witcover observed that reporters in the press room "nodded knowingly to each other; ... for all practical purposes, the presidential election of 1984 was over."

Which the purpose, however, was a public examination of the way in which debates should be administered, an examination that was unlike others that had been undertaken in the past.<sup>83</sup>

## Concluding Remarks

Any serious review of how debates come about will show that the candidates control the negotiation process, largely with the threat of nonparticipation, or with the ability to publicly embarrass sponsors and broadcasters.

Candidates' agents—campaign and television experts—insist upon control of factors relating to their expertise and or responsibility. These candidate surrogates jockey among themselves, seeking to gain one or another advantage for the campaign and the candidate. They want to have their way. Having their way on even the most insignificant detail reinforces their perception of controlling factors that they believe will help their candidate to come out of the debate ahead of the opposition. Hence, their concern over details is directly related to their perceived control of the negotiations Each campaign's debate demands are constrained primarily, if not only, by the opposing campaign's counter demands.

Simply, then, debate negotiators insist on control because they want to move debate elements in favor of their candidate. Their reasoning runs from controlling negotiations to winning the election:

- 1 Controlling the negotiations increases favorable formats for candidate.
- Pavorable formats increases likelihood of achieving favorable exposure for candidate.
  - 3 Favorable exposure increases likelihood of winning the debate.
    4 Winning the debate increases probability of winning the
- 4 Winning the debate increases probability of winning the election.

  Advisers are not fools. They know that who wins the debate is of vital interest to the media. They know that the media, along with the

public polls, play a significant role in determining who won a given

debate. An investigation into media's role in covering televised debates (chap. 4) reveals a peculiarly interesting symbiotic relationship

between debate negotiators and journalists

## ENDNOTES

1. Remarks by Jack Kelly CBS pool producer for the 1976 San Francisco debate in, Sidney Kraus (Ed.), "Presidential Debates De-Briefing," Crystal City Marriott, Arlington, Virginia, November 30, 1976, unpublished transcription, p. 123

paigns Horace Greely, Joseph Medill, Dr Charles H Ray, among others, were newspapermen who coached and advised Lincoln In preparing for his Cooper Union speech, Lincoln consulted with Medill and Ray, both of whom plan the Lincoln-Douglas debates, gave them national publicity, and preoffered several suggestions Lincoln thanked them, but did not alter any part showman, an amiable medicine man, an eccentric with high principles, a mass co-authored the original Republican Party platform Ray helped sumed to coach Lincoln privately on both his argument and platform man-2. Newspapers and editors were powerful influencers of presidential camof the speech based on Medill's and Ray's suggestions "Greely was a master was played by influential editors and their newspapers and by Lincoln's own knowledge of the press, and "Ray and ner " See, Jay Monaghan, The Man Who Elected Lincoln (Indianapolis' Bobbshow to use it "See, Tebbel and Watts, op cat, pp. 168-176 of unresolved contradictions . a vital role Merrill, 1956) p viii Lincoln

3 On March 6, 1857, just 2 days after the inauguration of James Buchanan as the 15th President, Roger B Taney, Chief Justice of the Supreme Court, read for more than 2 hours the opinion of the Court in Dred Scott v Scott v Scott a Negro stave, wanted to be a free man The Court set in place two new rules interpreting the Constitution 1) Negroes could not become US cutzens, or a state cutzen, 2) Congress and not have the power to exclude slavery from the federal territories For a thorough discussion of the case see, Jon E Febrenbacher, The Dred Scott Case. Its Significance in American Law and Politics (New York Oxford University Press, 1978).

4. It should be noted that these debates for the U.S. Senate included several references to the coming (1860) presidential election. For example, Lincoln was convinced that a Republican victory at the polls would, eventually, end the pro-slavery Supreme Court position In the Galesburg debate Lincoln said, "It is my opinion that the Dred Scott decision, as it is, never would have been made in its present form if the [Democratic] party that made it had not been sustained previously by the elections. My own opinion is, that the new Dred Scott decision, deciding against the right of the people of the States to exclude slavery, will never be made, if that party is not sustained by the elections." Debates of Lincoln and Douglas (Columbus: Follett, Foster, 1860).

5 These debates occurred as follows.

1st debate—Ottawa, August 21
2nd—Freeport, August 27
3rd—Jonesboro, September 15
4th—Charleston, September 18
5th—Galesburg, October 7
6th—Qunncy, October 18

7th—Alton, October 15
6 See, for example, a discussion of the differences in preparations for the Lincoln–Douglas debates and those of the 1960 Kennedy–Nixon debates,

New York Times, September 26, 1960, p. 25 A comparison of the press coverage of the 1858 debates and those of today is in the next chapter, p 77

In 1964 Senator Barry Goldwater and his supporters vigorously tried to involve President Johnson in debates, but the incumbent was at the peak of his popularity and so ignored the appeals to debate. Likewise, for reasons of political advantage by one candidate or the other, presidential elections in 1968 and 1972 were conducted without debates

University of Wisconsin Press, 1980); S. Chaffee, "Presidential Debates.—Are They Helpful to Voters?" Communication Managraphs, XLV (1978), 330–346; 8 G Bishop, R. Meadow, and M Jackson-Beeck (Eds.), The Presidential Debates Media, Electoral, and Policy Perspectives (New York Praeger, 1978), L. Bitzer and T Rueter, Carter us Ford. The Counterfest Debates of 1976 (Madison S Kraus (Ed.), The Great Debates (Bloomington Indiana University Press, Political Process in the Free Society (Santa Barbara Center for the Study of Democratic Institutions, 1962), L. Mitchell, With The Nation Watching Report ington, MA Heath, 1979). The Presidential Campaign, 1976 Vol 3, The Debates Institute, 1979), W Ritter (Ed ) The 1980 Presidential Debates Special issue of Indiana University Press, 1979), M. Martel, Political Campaign Debates. Images, Hoffman, and H Wheeler, The Great Debates. An Occassonal on the Role of the of the Twentieth Century Fund Task Force on Televised Presidential Debales (Lex-(Washington, DC Government Printing Office, 1979), A Ranney (Ed.), The Past and Future of Presidential Debates (Washington, DC American Enterprise Speaker and Gavel, XVIII, 2 (1981), J Swerdlow, Beyond Debate A Paper On 1962), S Kraus (Ed), The Great Debates Carter us Ford, 1976 (Bloomington Strategies, and Tactics (New York Longman, 1983), E. Mazo, M. Moos, H. Teleused Presidential Debates (New York. The Twentieth Century Fund,

- 9. See chap 4, endnote 2 10 J Auer, "The Counterfeit Debates," in Kraus (1962) p 146; see also Bitzer and Reuter
- 11 L Milic, "Grilling the Pols Q & A at the Debates," in Kraus (1979) p.
- 12 N Polsby, "Debatable Thoughts on Presidential Debates," in A. Ran
  - ney (Ed ) p 184.
- 13. Bitzer and Reuter, pp 225-250
- 14 J Auer, "Great Myths About Great Debates," in Ritter (Ed ), (1981)
- 15. See Bibliography
- M Martel, "Debate Preparations in the Reagan Camp An Insider's View," in Ritter (Ed ) p 46
- 17 R Sarnoff, "An NBC View," in Kraus (1962), p 60. This article is based on a speech delivered to the San Francisco Advertising Club, October 5,
- 18 F Stanton, "A CBS View," in Kraus (1962), p 70 This article is based on a speech to the journalism fraternity, Sigma Delta Chi, New York, De-

- 19. U S. Government Prinung Office The Presidential Campaign, 1976 Jolume Two, Part Two (1979) p 693.
  - 20 Ibid, pp 704-705
    - 21. Ibid, p 705
- 22 Letter to Sidney Kraus from Michael Raoul-Duval, Special Counsel to the President, October 27, 1976
- electorate, and with the League of Women Voters Education Fund involved, 23 With candidates interested in winning the election, not educating the conflicts in format negotiations are inevitable.
- 24. S Kraus (Ed.), "Presidential Debates Debriefing" (Unpublished manuscript Transcript of meeting at Crystal City Marriott Inn, Arlington, VA, Nov 29-30, 1976) pp 131-132.
- 26 In effect, this would have provided television audiences with three different formats of the same debate since the three individual network directors could select a variety of shots Thus, as with any news event, the "editors" was precisely this editorial prerogative that the networks defended and the would decide which aspects, as the event proceeds, should receive attention. It candidates attacked
- Kraus, "Debrefing," p 139. See, for example, H Terry and S Kraus, "Legal and Political Aspects. Was Section 315 Circumvented," and R. Salant, "The Good But Not Great Nondebates Some Random Personal Notes," in Kraus (1979) pp. 3-10 and 175-186, respectively
  - 29 Kraus, "Debnefing," pp 114-117.
    - 30 Ibid, pp. 142-147.
- 31 E Katz and J Feldman, "The Debates in the Light of Research: A Survey of Surveys," in Kraus (1962) pp 193–195, J Robinson, "The Polls," in Kraus (1979) pp 262–268
  - "Debriefing," pp 100-101. 32 Kraus.
- 33 Mitchell, Wuh the Nation Watching (1979).
- 34. Broadcast on NBC Radio Network, March 27, 1979
- 35. Much of the materials for this and the following section was obtained through interviews and observations by the author as he witnessed the preparations for and attended the 1980 and 1984 presidential debates.
- 36 During that period the now famous Nashua (New Hampshire) debate between Bush and Reagan occurred Reagan had just been upset by Bush in dates, who had not been invited, began to stroll into the hall. The confusion resulted in a disorderly audience Reagan began to introduce the other candithe Iowa caucuses. On the night of the debate the other Republican candidates and as the organizer attempted to cut off his microphone Reagan said, "I paid for this microphone, Mr Green" This was indicative of the "new" Reagan who had taken command of his campaign and began to discuss issues

Reagan said that he "paid for the microphones simply because of that decision by the Federal Election Commission . you realize that campaigning is now a government regulated industry and the government regulations

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" PRINTEFORMATS"

prescribe that the paper could no longer sponsor it, and there would be no debate if we didn't put up the money "Transcribed from audio tape of Reagan press conference, Republican Convention, Detroit, July 17, 1980.

and postresponses to John F Kennedy's involvement in the Bay of Pigs and Miles Watts, The Press and the Presidency, (New York Oxford University Press, See, for example, discussions of journalisue and public opinion pre-Alfred A Knopf, 1979) pp 385 and 447-448, and John Tebbel and Sarah the Cuban missile crisis in David Halberstam, The Powers That Be, (New York: 1985) pp 487-488.

proximity of candidates, informal and conversational) Carter's attention to There were five Republican televised debates between January and April in the primaries of Iowa, New Hampshire, South Carolina, Illinois, and Texas The League sponsored the New Hampshire, Illinous, and Texas de-Essentially, the formats were the same as ever, with some modifications (i.e., bates The first primary debate (Iowa) was sponsored by the Des Momes Register and Tribune The third debate (South Carolina) was sponsored by the University of South Carolina, Columbia, and the Columbia Newspapers, Inc Iranian hostages precluded Democratic primary debates Republicans had seven viable candidates, Democrats had three.

in Balumore and then the Carter-Reagan debate in Cleveland The wire did "Symbolizing the more personal quality of network news is the relative attention given the debate about debates, first, the Reagan-Anderson debate not ignore the debate-debate issue, but it ranked fourth among all "issues" on JPI. But on CBS it ranked first, at least in hard news coverage On "Evening News," there was more hard campaign news about the debate-debate than about the hostage "issue" or the economy." M. Robinson and M. Sheehan, Over The Wire and On TV: CBS and UP! in Campaign '80 (New York: Russell Sage, 1983) p. 209.

40 "In the jockeying that normally preceded them and, even more, when one of the candidates declined to participate, the debates often appeared to nication This was the 'debate' form in which, to dramatize the refusal of an opponent to participate in a more traditional debate, the script called for the become the major issue of the campaign. This was especially true in the sixtues, when the 'empty chair debate' flowered as a form of political commucandidate to appear on television with an empty chair as a symbol and reminder of the opponent's cowardice "S Becker and E Lower, "Broadcasting in Presidential Campaigns, 1960-1976," in Kraus (Ed.) (1979) p. 16.

41. "Statement by Ruth Hinerfeld, Chair, League of Women Voters Education Fund," press release, September 17, 1980

42 League President, Ruth J Hinerfeld wrote: "I could find nothing in my notes to substantiate the claim that candidates' reps agreed candidates would question one another " Letter to Sidney Kraus, September 16, 1981

43. New York Dauly News, Manhattan magazune, November 15, 1980 See 44 The scene in Baltimore's Convention Center was chaotic. Among the comments about Hanna's views in Swerdlow, Beyand Debate, p. 72, note 32.

hundreds of chores that remained to be completed in the few days before the

debate, many appeared to be trivial, but were linked to one or another's perception of their role in preparing for this debate. It was in this frenzied atmosphere that negotiations continued Reagan's representatives forced the removal of 200 VIP seats (just before the debate they were reinstalled), the Balumore Fire Department, invoking a state law prohibiting propane gas in room was installed in the event that Carter showed up; rumors circulated that met for 4 hours on Saturday to discuss seating arrangements (decisions were the Center, forced the removal of two Winnebago motor homes that were brought in for the candidates (they were replaced by curtained areas that prompted Bill Carruthers, Reagan's television expert, to complain about the lack of a washroom facility for Reagan behind the stage)-a third draped Carter had agreed to a three-way debate in either Louisville or Portland, although Carter's absence alleviated the request for debate tickets, the League made on Sunday); Frey complained to Mayor Schafer about ABC being charged \$91 for each hotel room, and the entrance to the Center was being picketed while the press was being chauffeured to and from the Center, courtesy of the City of Baltimore.

responsibly with their requests [for such shots] and I see nothing out of the 45 Every broadcaster that was interviewed by the author supported reaction shots and cut aways as legitimate "copy" for the networks coverage of the debate Marvin Schlenker, ABC pool director, felt that "the networks will deal ordinary for making those requests That's what broadcast news is about." loseph Angotti, producer for NBC's coverage, agreed

46. Interview with L. Hanna, Stouffer Inn, Cleveland, October 16, 1980

Newsweek (April 21, 1981) p 31.

48. Accusations were made that the briefing book was used to advise Reagan in his match with Carter A House subcommittee and the Justice Departunsolicited. For a complete discussion of this incident see, "Unauthorized tion," Report prepared by the Subcommittee on Human Resources of the ment investigated the notion that there was a "mole" in the White House. Reagan supporters claimed that the Carter document was given to them Transfers Of NonPublic Information During The 1980 Presidential Elec-Committee on Post Office and Civil Service, House of Representatives, Part I and II, U S Government Printing Office, May 17, 1984.

49 This information was given to this writer by a board member of the

50 D. Sears and S Chaffee, "Uses and Effects of the 1976 Debates: An Overview of Empirical Studies," in S. Kraus (Ed.), The Great Debates Carter us Cleveland League of Women Voters Ford, 1976, op cut., p 247.

51 Most of the comments about the performances in the two presidential debates centered on Ragan: faltering as the "great communicator" in the first debate; recapturing his "old self" in the second. Less attention was given to Mondale's performance in the two debates taken together

G Pomper, op cat, p. 81

53 In June, Mondale attended the NOW convention where its president, udy Goldsmith, admonished the Mondale campaign: "We're saying, 'If there 54 Although the Reverend Jesse Jackson's presidential candidacy did not represent the first time that a Black ran for the office (Representative Shirley Chisholm did so in 1972), his ability to command the public's attention made him an attractive candidate for the media to cover.

55. See, for example, N W Polsby, "Debatable Thoughts on Presidential Debates," in A Ranney (Ed.), The Past and Fisher of Presidential Debates, (Washington, D.C. American Enterprise Institute, 1979) pp. 175–190 For a fuller discussion of debates and polls see chap 4

56. Text of Senator Edward Kennedy's nomination speech before the Democrats' 1984 national convention at the Mascone Convention Center, July 19 Text venfied with his television address

57 Text of Walter F Mondale's acceptance speech at the Democrauc National Convention, July 19, 1984 Text verified with his television address 58 A seasoned reporter has offered a different interpretation of Reagan's success with television.

That Reagan had been an actor most of his life has been cited—beyond all previously known limits of redundancy—as the explanation for his success in communicating on television. In my minority opinion, acting background is an all-too-convenient, point-missing rationale for Reagan's effectiveness on camera and microphone. .. experience might help him. But what makes Ronald Reagan effective on television is that he is authente.

See C. Corddry, "Television Politics The Medium is the Revolution," in P Duke (Ed.), Beyond Reagan. The Politics of Upheaveal (New York. Warner Books, 1986) p. 253.

59 A more generous explanation suggests that "In part, Reagan's decision reflected his love of political debate. He had won the 1980 debate with Carter and had a reputation as an effective verbal contestant. In part, too, Reagan's acceptance reflected his view of what is fair play in politics. Even though Mondale's attacks were not eroding support among voters, Reagan wanted a chance to answer. P. Light and C. Lake, "The Election: Candidates, Strateges, and Decisions," in M. Nelson, The Elections of 1984 (Washington, DC: Congressional Quarterly Inc., 1985) p. 99.

60. League News Release, "Statement by Dorothy S Ridings, President, League of Women Voters, At Press Conference Announcing 1984 Presidental Debate Plans, September 17, 1984," Washington, DC

61. Local Leagues run major public relations campaigns to persuade the national office to select their cities as a site for one of the presidential debates. Often, these efforts include the enlisting of significant city leaders and a fundraising effort (see chap. 6).

62 Transcribed by author from his audio cassette recording at press conference in Galt Hotel, Louisville, KY, October 6, 1984

63. For a fuller discussion of the selection of panelists in 1976 see Kraus

(1979), especially P Lampl, "The Sponsor The League of Women Voters Education Fund," pp. 98–101 and R Salant, op ctt., pp. 182–184 Salant was also irritated by the League's and candidates' insistence that TV broadcasters not be allowed to take audience reaction shots

64 Estimates of the US and worldwide audience for presidential debates have ranged from 200 to 250 million

65 A Hunt, "The Campaign and the Issues," in A. Ranney (Ed.), The American Elections of 1984, p. 150

66 Quoted in Broadcasting, October 15, 1984, p 37

Ibid, p. 36

1984, p 35

68 Reagan was played by Mondale's professor in law-school, Michael Sovern, and David Stockman, Reagan's budget director, was cast as Mondale 69. "TV debates: pivotal points for politics," Broadcasting, October 15,

during the debate Discussions among guests after the debate and subsequent media reports and interviews confirmed this observation. Several researchers and commentators have suggested that audiences watching the debate on television reacted much the same way as those in the Hall. For example. "Reagan was hestirat in his delivery and unsure of his facts, while Mondale gave the more confident and commanding performance." Thomas E Patterson and Richard Davis, "The Media Campaign Struggle for the Agenda," in Michael Nelson (Ed.), The Electum of 1984, (Washington, DC Congressional Quarterly, Inc., 1985), p. 121, "inexplicably to all those closest to the President and to millions who admired him from a distance, that 90-minute televised confrontation with Mondale revealed a different Ronald Reagan The Great Communicator was strangely awkward, halting, even confused before the cameras that had been major instruments in his success, first as an actor, later as a politicam." J. Germond and J. Witcover, Wake Us When It's Over Presidental Polituz of 1984, (New York Macmillan, 1985) p. 1.

71 Geraldine A. Ferraro, Ferraro My Story, (New York Bantom Books, 1985), p. 243. For Ford-Carter measurements see H. Seltz and D Yoakam, Production Diary of the Debates," in Kraus (1979) p. 122.

72 There is, however, evidence demonstrating that such factors may affect voter-viewers' decisions. For a brief review see, S. Kraus, "The Studies and The World Outside," in S. Kraus and R. Perloff, Maxs Media and Political Thought An Information Processing Approach (Beverly Hills Sage, 1985) pp. 318-390.

73 J Germond and J Witcover, Wake Us When It's Over, p 519.

74 There appears to be a tendency for the media to ask about the weight of debate briefing books (they have ranged from 6 to 12 pounds) For the media's handling of debate briefing activities see Chapter Four.

75 G. Ferraro, Ferraro My Story, p 247.

76 His persona was strikingly similar to Richard Nixon's in his first 1960 debate with John F Kennedy in Chicago Both were tired and drawn Both

appeared to be struggling with portions of their answers. And both received low marks in the press and public opinion polls. Reagan, however, was elected to a second term as president, Nixon would have to wait 8 years for his first term

77. See J Germond and J Witcover, op. cst., pp. 2-3.

78. *Ibid.*, p 3

79. Ibid, p. 2

80 Given the fact that an incumbent aging president was running for another term, it was a legitimate issue for the press to explore. Their role in setting the "age agenda," however, raises questions about the relationship between the media and these debates. The topic of media's role in reporting and participating in presidential debates is detailed in the next chapter.

81. Germond and Witcover's chapter title, op. cst, pp. 1-15

82 Ibid, p 9

83 Televised presidential debates have been assessed in many different ways by scholars, professionals, and other individuals and groups with varying interests and competencies. The first major debate debriefing conference occurred after the 1976 debates with representatives from the following Carter, Ford, League of Women Voters, network television, journalists, scholars, FCC legal advisers, and the John and Mary R. Markle Foundation (S. Kraus, Chair, "Presidential Debates De-briefing," Crystal City Marriott, Arlington, Virginia, November 29–30, 1976, transcribed by N. W. Kramer, Brooklyn, New York).

In the second debate the incumbent Pres ern Europeans wern Most media analysts peared as though the an important study after the debate reinterviewed betwee er, gave the win to C conducted the study the news to reach opinion."5

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It was evident that tion by the reaction the night of the del in the working pres